SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 443

HUGHES TOOL COMPANY, ET AL., PETITIONERS,

vs.

TRANS WORLD AIRLINES, INC.

No. 501

HUGHES TOOL COMPANY, PETITIONER,

vs.

TRANS WORLD AIRLINES, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 710] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants.

OPINION—December 5, 1961

METZNER, D.J.:

Plaintiff moves pursuant to Fed. R. Civ. P. 34 for the production and inspection of certain documents. Dispute exists as to the time when the documents shall be produced and as to three categories of requested documents. The first category refers to loans (item I(e)). The second category refers to balance sheets and profit and loss statements for the years 1939 through 1960 (item V(a)). The third category refers to federal income tax returns for the years 1939 to date (item V(b)).

The order of priority of deposition proceedings has already been set. Consequently, while a motion pursuant to Rule 34 may be made at any time, it does not follow that the order granting such a motion should vary previously [fol. 711] established schedules under Rule 26. *Holt* v. *The James Sheridan*, 12 F.R.D. 72 (S.D.N.Y. 1951); *Technical Tape Corp.* v. *Minnesota M. & M. Mfg. Co.*, 18 F.R.D. 318 (S.D.N.Y. 1955). The documents should be produced prior to the dates scheduled for the taking of the depositions noticed by plaintiff.

The complaint states claims of conspiracy in violation of the antitrust statutes. The scope of proof is quite broad in these cases and under the liberal federal rules wide latitude is permitted in the deposition-discovery proceedings.

Rule 34 must be read in conjunction with Rule 26, which permits testimony which is "reasonably calculated to lead to the discovery of admissible evidence." The financial data sought by this motion come within the "rule of relevancy" as applied to the allegations of the complaint. Income tax returns are not protected by privilege. *Konczakowski* v. *Paramount Pictures, Inc.*, 19 F.R.D. 361 (S.D.N.Y. 1956).

Defendant may request relief pursuant to Rule 30(b) upon the settlement of the order to be entered hereon.

Motion granted. Settle order.

Dated: New York, N. Y., December 5, 1961.

Charles M. Metzner, U. S. D. J.

[fol. 1024] [File endorsement omitted]

[fol. 1025]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

vs.

HOWARD R. HUGHES, HUGHES TOOL CO. and RAYMOND M. HOLLIDAY, Defendants.

Transcript of Proceedings—New York, February 23, 1962

Before: Hon. Charles M. Metzner, District Judge.

APPEARANCES:

Cahill, Gordon, Reindel & Ohl, Esqs., Attorneys for Plaintiff; John F. Sonnett, Esq., Dudley B. Tenney, Esq., and Marshall Cox, Esq., of Counsel.

Chester C. Davis, Esq., Attorney for Defendant Hughes Tool Co., Chester C. Davis, Esq., and Maxwell E. Cox, Esq., of Counsel.

Cravath, Swaine & Moore, Esqs., Bruce Bromley, Esq., [fol. 1026] and Winthrop, Stimson, Putnam & Roberts,

Esqs., Peter W. Kaminer, Esq., and Silas M. R. Giddings, Esq., and Ben-Fleming Sessel, Esq., and Chadbourne, Parke, Whiteside & Wolff, Esqs., Edward Neaher, Esq., and Dunnington, Bartholow & Miller, Esqs., Charles L. Stewart, Esq., of Counsel, Attorneys for Additional Defendants.

ARGUMENT ON SCHEDULE OF DEPOSITIONS
RE ADDITIONAL DEFENDANTS

Mr. Bromley: May it please the Court, my name is Bruce Bromley. My firm is Cravath, Swaine & Moore. We represent four of the nine additional defendants which about ten days ago were brought into this action by way of the assertion of alleged counterclaims.

Four of the nine additional defendants represented by me are Metropolitan Life Insurance Company, the Equitable Life Assurance Society of the United States, James F. Oates, Jr., the president of Equitable, and Harry C. Hagerty, the vice-chairman and board of directors of Metropolitan.

There is before you, brought on by notice, a motion on our part which is by way of an appeal from a ruling or [fol. 1027] rulings of the Special Master. The motion seeks an order and direction from your Honor that the schedule of depositions which your Honor set by order of February 7th be revised and that the additional defendants be granted priority of discovery after the defendant Tool Co. shall have completed its discovery of TWA, and to that extent the schedule be interrupted so we additional defendants can discover the basis of the counterclaims after Tool Co. shall have discovered the basis for the complaint against it, and then, and not till then, shall the rest of the discovery by way of deposition go forward.

On February 13th, which was just a week after your Honor set the schedule in the main action, Tool Co. served upon us a 62-page alleged counterclaim and answer.

In that document six so-called counterclaims were pleaded, and nine additional defendants were added to the action. As I say, this was just a week after you had set up the schedule in the main action.

Five of those counterclaims concerned the additional defendants. Only one of them is a real counterclaim against [fol. 1028] TWA, and that is the sixth one for unpaid interest, so alleged.

But the other five claims are really independent claims, and TWA is joined merely, I submit, as a device in order to label these claims as counterclaims, because no relief is sought against TWA of any substantial nature, although the claims demand against the additional defendants more than half a billion dollars in damages, in addition to certain injunctions.

Within hours after these counterclaims were filed, Tool Co. through Mr. Davis, Hughes Tool Company, instituted efforts before the Special Master to subject all these additional defendants and the counterclaims to the three established schedule of depositions which your Honor had set up before any of these claims against the additional defendants had been asserted.

I say to your Honor at the outset your schedule obviously was set up in an entirely different lawsuit than the one which now confronts us and is before you. In spite of our best efforts with the Special Master he has refused to grant us what we believe to be adequate relief, and he has ruled [fol. 1029] that before any of us additional defendants can have any discovery of any kind by way of depositions from Tool Co. relating to the counterclaims Tool Co. may examine not only TWA as to the basis of its complaint against Tool Co., but also examine in aid of Tool Company's defenses to that complaint, examine all other witnesses and parties, and also may examine the additional defendants.

He has also indicated that Tool Co. may examine not only as to the basis of the plaintiff's claim against Tool Co., but also the additional defendants on the counterclaims.

That ruling, we submit, is wrong because it denies the additional defendants seasonable opportunity to develop from Tool Co. the person asserting the counterclaims against the defendants the basis of those claims, the real issues, and denies us the opportunity to define and delimit them in seasonable time so that we may, if we are so ad-

vised and the basis appears, move to dismiss some or all of them.

The ruling denies us that seasonable opportunity so to protect ourselves because many, so many of the facts which are relevant to the complaint and the defenses thereto, [fol. 1030] are equally relevant to the claims made against the additional defendants.

Had these so-called counterclaims been asserted against the nine additional defendants in a separate action, as they should have been, these defendants would, of course, have been accorded priority of discovery as to their basis in just the same manner that you accorded Mr. Davis, and his defendant client, Tool Co., priority.

The Court: Judge Herlands did that; I didn't.

Mr. Bromley: I am sorry, you are correct. Just as Judge Herlands did.

The Court: He gave them priority. I didn't give them priority.

Mr. Bromley: They got that priority.

The Court: They have it.

Mr. Bromley: They got it, and Mr. Davis asserts that is proper action, and normal procedure is always to give the defendant priority, except in this situation.

But Tool Co. has now become a plaintiff against us additional defendants, and I think the law in conventional counterclaim situations is clear that while the defendant [fol. 1031] in an action can have a limited priority to discover the basis of the claims against him, the next proper step is also for the plaintiff, who becomes a defendant on the counterclaims, to have the next priority with respect to those counterclaims. That is what has been denied us, because the Special Master, looking at your schedule, the names, the dates, has embarked upon a program which may take months, perhaps years, to complete that schedule, because it is completely broken apart.

We now have nearly two thousand pages of one TWA witness alone, and although under your schedule we are all due to be in California on the 20th to take the deposition of a witness, one Thomas—

The Court: Didn't he agree to come to New York? I suggested that he be brought to New York at the time I had the prior conference.

Mr. Sonnett: He did, your Honor, subject to certain mechanical arrangements about transportation, and so on.

The Court: All right.

Mr. Sonnett: As the record stands, I think that he is prepared to come to New York, and so is the Bank of [fol. 1032] America, provided they have arrangements made for their transportation expenses and counsel fees and reasonable notice.

The Court: Thank you, Mr. Sonnett.

Mr. Bromley: My only point is I don't care where the deposition is taken, the fact is the schedule has been completely disrupted because the Special Master says, "The dates don't mean anything; I am going to accord Tool Co. full and complete opportunity without regard to the dates that you set to exhaust its discovery against TWA."

It looks to me, although Mr. Davis refuses to make any estimate, that having really only scratched the surface on one witness that before he comes to the end of the trail on all the TWA witnesses alone it will be months away.

Now, if they are after, he can go down this whole schedule while we sit back unable to find out under proper discovery procedure what the issues between us on the counterclaims really are, and what the basis of those claims are. It is impossible for us to follow this schedule and adequately protect our clients.

I submit that it is of the greatest importance that we [fol. 1033] learn as soon as possible, without interference with his right of discovery against the plaintiff, the basis, the limitations, and the facts underlying his claim against us, and when that shall have been done it is then time enough for both of us to complete discovery with everybody else.

I want to make it perfectly clear that I have no quarrel with Tool Co., Mr. Davis', right to discover against TWA's complaint and to examine all of the witnesses. I wish the Special Master would make him get down to work and do it a little more promptly, but I have no desire to interfere with that. All I wanted to do is to take my place next in line so that I can start somewhere near even with him when we come to proceed to the host of other witnesses who will follow.

I must say that what Mr. Davis has done appears to me to be a very clever device indeed having gotten you to sign an order giving him complete priority in an action, and having that order signed, sealed and delivered, he then serves this massive claim against nine additional parties, and insists that the schedule which your Honor set—and he has persuaded the Master to follow it—be adhered to [fol. 1034] without regard to the rights of the additional parties to exercise their traditional and normal right of discovery as soon as it is practicable. And surely it is practicable for us to exercise that right of discovery as soon as he shall have developed all of the basis of the three causes of action asserted against him in the TWA complaint.

So, I say that the ruling of the Special Master is an abuse of discretion because of the great prejudice to the additional defendants involved in his decision.

I would like to take just a moment further more to point out, because I think it bears on this, what I said at the outset. That these five claims against the additional defendants are dressed up as counterclaims when they are not counterclaims at all, and obviously done to enable Mr. Davis to hang on to the priority order which Judge Berlands gave him, and to the schedule which your Honor gave him.

I want to take just a minute to look at the second counterclaim. It asserts on behalf of defendant Tool Co. the claim that additional defendants Equitable and Metropolitan have acquired control of TWA in violation of the Federal Avia- [fol. 1035] tion Act. But it seeks no relief against TWA. All it seeks is that my defendants be ordered to terminate the voting trust which exists under the financing of all the Tool Co. stock in TWA deposited in that voting trust.

Now, sure, in words the counterclaim says, "We ask the Court to order the TWA recognize any court order which may terminate the voting trust."

Surely, no one in his right mind would say that you need a court order to TWA to cause it to obey another court order. That is a transparent device to make it appear as though this was a counterclaim.

That goes right down through the whole list. In the next counterclaim, where they seek to recover $135 million against the additional defendants, they don't ask any damages against TWA, they don't ask any relief against TWA, except that if the Court orders the termination of the voting trust once more TWA shall recognize that order.

Now, why do I mention that? I think we ought to move to dismiss all these counterclaims, except the sixth one, which is a real counterclaim. I hope TWA will do so, and [fol. 1036] in our notice of motion we say we intend to at a day to be fixed by your Honor. But the importance of it today is that here they have a wide open opportunity to develop all the facts that they want to with respect to their claims while we must sit back in ignorance of that information which the rules are designed to accord us by way of discovery of claims asserted against us, or any other person who is in the posture of a defendant. I say that is wrong, and I say that is an abuse of discretion.

I would like to illustrate again, if I can, just how we will be prejudiced with a precise example about Mr. Thomas, of whom we have spoken.

Mr. Thomas used to be the president of TWA. He left in July, 1960. It is alleged in the counterclaim that the additional defendants procured Mr. Thomas' resignation as part of a conspiracy to enable them to insist upon a voting trust of the Hughes stock in TWA. My position is that my clients had nothing to do with procuring the resignation of Thomas, and I believe that it in fact was forced by Hughes, who after a long and bitter negotiation with Thomas booted him out of TWA. But if I have to go ahead [fol 1037] with Thomas, either in California or in New York, when his term comes under your Honor's schedule, I have got to do that without having had any discovery as to what the Hughes claim is with respect to the charge which involves Thomas asserted in the counterclaims.

I apprehend that lacking that discovery if I get it much later on I shall have to request, move, that Thomas be produced again.

The Court: I would think that is what is going to happen, Judge Bromley.

Mr. Bromley: Yes. Now, what a waste of time, effort and money that is.

The Court: What do your friends on your left say?

Mr. Sonnett: I would like to be heard, your Honor.

When the additional—

The Court: We assume you will be heard, Mr. Sonnett. I am sorry, I just wanted to tell Judge Bromley something which I am sure he knows, that you have been at the bit since last July, eight months ago, to start, and now he has come in and wants you to wait some more. I assume he understands the effect of his request.

[fol. 1038] Mr. Sonnett: Well, I will have partial opposition to his motion to present in due course, your Honor.

Mr. Bromley: You remind me of defendants in a negligence case. The plaintiff can just sit still, you know.

I only want a little interruption. I don't want to disrupt his plan. I agree he ought to be able to go ahead just as fast as he can, but I do not see how anybody can possibly object to all of us, who have had very little connection with this litigation, being given an opportunity to discover on what basis in the world we are sought to be held liable for half a billion dollars before we undertake to cross-examine, before we undertake the task of posing proper objections, to this vast parade of witnesses. That strikes me as being very fair, and I don't believe Mr. Sonnett will really oppose that once he understands the limited nature of my request.

That confusion to which you spoke, in answer to my suggestion, will follow every witness if this piecemeal approach is permitted.

I mean by that to say that if we have no discovery of the [fol. 1039] claims against us, and Mr. Davis goes ahead on the counterclaims with everybody else, then Mr. Thomas is only one of a large number who we will have to come back and examine again, and I submit that that is a waste of the judicial processes of this Court, and an undue burden on the defendants, and an unnecessary expense.

We were just served with a memorandum from Mr. Davis, and I want to call your Honor's attention to one statement in it, because I think it supports my assertion

that he has done all this with malice aforethought and with a cleverly designed purpose, and so far as the Special Master is concerned he seems to be getting away with it.

On page 15 of his answering memorandum he says:

> "Cases which hold that absent special circumstances priority of discovery shall be based upon who first serves a notice of deposition express a general rule, but in the instant case Tool Co. served its notice to take the depositions of the additional defendants as witnesses many months ago."

[fol. 1040] I think that discloses what he is up to. Before we were concerned with the litigation, or had any standing in it, he served notices to take our depositions. Then when we come into it as additional defendants he says, "Ah, I have priority because, indeed, I served you with a notice many months ago."

I think that discloses his scheme, and I think he should be stopped in order to accord us what the law so frequently and so clearly says the normal rule is, to enable the defendant, as soon as possible, to discover the basis of the claims against him.

As I understand it, Mr. Kaminer from Winthrop & Stimson is here for Irving Trust Company, and Mr. Sessel, and desires to add something with respect to his position.

The Court: Mr. Kaminer.

Mr. Kaminer: Thank you very much, your Honor.

May it please your Honor, I represent temporarily the Irving Trust Company, together with Mr. Sessel and Mr. Giddings.

I say "temporarily" because we were just served and I was the only partner who had a few days available.

[fol. 1041] I was not present at any of the hearings before the Special Master. We were served very recently with this half a billion dollar counterclaim. I want to say if I should make any mistake about facts it isn't intentional. This is all I have been able to learn in the three days that I have had since I got Judge Bromley's motion.

I want to ask for the same relief that Judge Bromley does. I have not even formerly appeared herein, but I have

with me a notice of appearance, I have with me a paper which I ask your Honor's leave to serve, and that is a paper requesting exactly the same kind of relief that Judge Bromley does, and adopting his memorandum as mine. In other words, there is nothing new in the paper which Mr. Davis has not seen, just so that I have formal standing here to be before your Honor, and also a notice to take the deposition which Judge Bromley has already served.

I don't want to take the time now to interrupt your Honor while I serve these papers. If your Honor prefers—

The Court: You may go ahead.

[fol. 1042] Mr. Kaminer: I want your Honor to consider the situation my clients are in, and their counsel. It is true that your Honor made an order setting forth in what order certain witnesses should be examined and certain depositions taken, but that order was made at a time when we were not sued. We had no standing to be heard, we were not here, we could not have been.

Now, then, the next thing we get is this enormous counterclaim, and I only want to say this. I have spent a lot of time reading it. These are several counterclaims. The sixth one is the only counterclaim which can be said to be one in truth and in fact, and that is only asserted against TWA. Everything else either the relief sought is in favor of TWA, or TWA is brought in by some stringpulling.

Now, we will have time, and we will make a motion, as Judge Bromley pointed out, to say that these counterclaims should be dismissed, and that is the first thing we need time for. They should be dismissed because no matter how liberal the rules are upon analysis it will be seen that they had nothing whatever to do with the complaint and the counterclaims.

[fol. 1043] I can tell it to you in one sentence. The claim says—I am very new to this, so if I make mistakes forgive me—the claim says under the domination, stewardship, whatever you want to call it, of Mr. Howard Hughes and the Tool Company TWA was hurt by a violation of various laws. The counterclaim says under the domination, under the subsequent domination and control or stewardship of their lending institutions TWA and Tool Company were hurt some more.

That is a different story. It is no answer to the complaint to say later on some other people hurt you.

Now, imagine what kind of morass we are getting into. I am a great believer of consolidation for trial in all kinds of things, but there is nothing here to be consolidated. There are two separate and distinct claims. The Special Master, as I have read in the record, has said this.

It may be there should be priority with respect to the claim of the complaint, and then maybe there should be priority to the additional defendants. He immediately recognized—and he is a very distinguished man and saw that [fol. 1044] clearly—that there will be an area where no one knows where those different priorities well lie because of arguments of counsel which will go on for ages. This will not expedite this case. This will all result in a morass.

Therefore, I say to your Honor that in accordance with the request of Judge Bromley, in which I fully join in every particular and without any exceptions, we be accorded the traditional right to examine first, that that should be granted, and we should also be given time, and your Honor should fix the time, when papers should be served and you will hear a motion to dismiss these counterclaims subject to their being brought in a separate action.

I think there are a lot of games being played here. I am all new to this, and I am just reading papers, as I did all day yesterday. I think the game is that Mr. Hughes doesn't like to be examined, and that is why we have all these very devious schemes of serving notice for examination of witnesses, getting an order setting forth a schedule, and then all of a sudden these witnesses become defendants in a half million-dollar suit.

The Court: Half a billion-dollar.

[fol. 1045] Mr. Kaminer: Your Honor is so right. Thank you.

The Court: I am impressed, Mr. Kaminer. I have got to admit that.

Mr. Kaminer: I am scared, your Honor. These figures are a little more than I am used to.

In addition to that, while there is a partner of mine who is not in the city and has not been since the counterclaim

was served who knows something about these facts, certain aspects of it, he has never been in court on this.

There is supposed to be production of documents in four places simultaneously. We have got to find out from our clients, we people who have not been to court before, what the facts are. We have got to prepare and elicit those facts and the basis of the counterclaim first from the one asserting it—i.e., the nominal defendant, really the plaintiff. So, I say to you I am not here appealing from the Special Master's ruling because I asked him for no relief. I am applying to you to modify your own order in view of these new developments, because the Special Master is bound by your order. I believe what he did he did because he [fol. 1046] thought your order compelled him to.

Your Honor had set down the schedule, and he thought that he should not deviate therefrom. That is my view, but I don't know the background.

I think your Honor ought to immediately consider, without interruption of the examination of TWA with which we are really not terribly concerned, modifying the priority question and setting down a time when we in any event should argue the dismissal motion, which will be brought.

Your Honor also ought to, I believe, consider that we are not dealing just as far as this priority question is concerned with sporting rules of the game. As far as we in my firm are concerned we have to find out what this is about. We do not know what this is about, and the rights of our clients are very much at stake.

We get a notice from Mr. Davis—that is, our clients did—and we didn't appear then so he couldn't send it to us, so I am not criticizing him—that these depositions are going on, and are going to go on according to this schedule. I have never been in a lawsuit, and I doubt whether your Honor has while your Honor was still in practice, where [fol. 1047] within a few days you find yourself expected to examine, cross-examine, where all the others have had months to know all the documents involved. It is just an impossibility.

I am not asking for favors as counsel. I am saying my client's rights cannot be protected.

Thank you very much, your Honor.

The Court: All right.

Mr. Stewart: My name is Charles L. Stewart, of Dunnington, Bartholow & Miller, appearing for Dillon-Reed & Company.

If your Honor please, the field has been pretty well covered by Judge Bromley and Mr. Kaminer, and if I may I would like to follow the same procedure that Mr. Kaminer has suggested and serve my motion later and adopt the brief of Cravath, Swaine & Moore.

Your Honor, we received this case from our clients late Monday afternoon. Prior to that time we had no opportunity to sit down with them, we didn't even know about the case other than what we had read in the newspapers. They handed over a series of papers which proved to be 60 pages of counterclaims seeking damages against Dillon-Reed in the amount of $400 million. Even though the [fol. 1048] counterclaims may eventually be shown to be completely baseless the issues are complex and they are very involved.

Yesterday I got a copy of the complaint, and although I have not had an opportunity to study it I agree with Mr. Kaminer that we probably should move to dismiss for improper joinder. But we do need time, your Honor, to make these motions addressed to the counterclaims.

Whether or not the joinder is proper we may even have to request your Honor allow us to take the deposition of the Hughes Tool Company before we can serve a reply on this case. In order to understand some of the facts that Hughes Tool Company bases its counterclaims on.

We came into this case, your Honor, some eight months after it had started. We came into it finding our client was scheduled to have its deposition taken two weeks away, on March 8th.

I join Mr. Kaminer and Judge Bromley in saying there is something very peculiar in this business of only six days elapsing between the time of the order and the time that these counterclaims are served. Both counterclaims must have been in the works for months.

The Court: I am surprised they got them out so fast.

[fol. 1049] I thought they were going to wait until they finished examining your clients. Everybody knew it was coming, Mr. Stewart.

Mr. Stewart: We didn't, this I assure you, your Honor. We did not.

The Court: Go ahead.

Mr. Stewart: I would like to suggest, your Honor, that they should not be allowed by this ruse of getting a schedule of examinations, examining us noticing us as witnesses in this case, knowing that we were going to be aided as party defendants on these counterclaims, to get priority of examination. I suggest to your Honor that that would prejudice our position irreparably.

I realize that counsel can't be in two places at once, and that your Honor having appointed a Special Master in this case may feel that the examination of TWA ought to be continued. If that is the case, your Honor, may I suggest, as did Mr. Kaminer and Judge Bromley, that after that examination is completed that Dillon-Reed have priority of examination of the Hughes Tool Company.

As Mr. Kaminer suggested, there apparently have been a lot of games going on in this proceeding about which [fol. 1050] at this point we know nothing, but it seems very, very strange to me that Howard Hughes, if he is the leading force behind all of these events, can manage to throw up enough of a smokescreen in which he can persuade this Court, or any of the parties here, that he should not be examined. If he has all the facts and all the background I suggest to your Honor that he is the one who can clear up all of this.

I also don't understand how he can come in and say that you can't get an examination of me because I am an eccentric in California, whereas you are just business men in New York City.

If your Honor please, we ask that we be granted additional time to make our motions addressed to the counterclaims, and that your Honor grant us priority in the discovery of the Tool Company.

Thank you.

The Court: Anybody else?

Mr. Neaher: My name is Edward Neaher, of Chadbourne, Parke, Whiteside & Wolff. I appear here as a pinchhitter for my partner Ralph Ray, who was to be here, but unfortunately had a critical illness of a member of his family at [fol. 1051] home and couldn't make it.

I am somewhat under the same difficulty as Mr. Kaminer in that I have had the benefit of a very quick look at the pleadings and the papers served by Judge Bromley.

The Court: Who do you represent?

Mr. Neaher: I am sorry, I meant to make mention of that. I represent Charles T. Tillinghast, Jr.

I saw enough in these papers, however, to indicate that it would be very advisable for us, on behalf of Mr. Tillinghast, to join in Judge Bromley's motion and adopt his brief, and I therefore request permission to serve a similar motion as Mr. Kaminer requested.

I don't think I can add much, except I don't think Mr. Davis would claim that an order granting priority in the examination of TWA should be construed as an order granting priority as against Mr. Tillinghast in his individual capacity as a defendant named in these counterclaims. It would certainly seem to us that as an individual defendant he ought to have the advice of counsel and an opportunity to study the claims made against him before [fol. 1052] he would be subjected to continued examination not as a representative of TWA but as one personally liable with other defendants for a staggering amount of money.

That is all I have to say, your Honor.

The Court: All right, Mr. Neaher.

Mr. Sonnett.

Mr. Sonnett: Yes, your Honor.

I said to your Honor earlier that I had a partial opposition to the position expressed by Judge Bromley, and that opposition also, which is only partial, applies to the position expressed by counsel for the other additional defendants.

I might add that I also anticipate that what I have to say will be in total opposition to what Mr. Davis will say to your Honor.

The Court: Why should this day be different than any other one?

Mr. Sonnett: I will try to, and I will, I believe, be brief, your Honor.

I have served no papers because I, too, thought that it was an informal pretrial conference under the general order, but I do not believe there are any papers I need to submit to make the point which I hope your Honor will [fol. 1053] consider and will grant.

Going back, quite rightly as your Honor did, to the history of the case, June 30th of last year, your Honor will recall that we applied before Judge Murphy for an order allowing us to examine Hughes within the 20 days on the ground of special circumstances. The special circumstances we then apprehended were that unless restrained Hughes would continue the malicious and very harmful efforts that were being made to disrupt a contract between TWA and Boeing for the supply of substantial numbers of planes in order that Hughes could try to succeed in his effort to ram down TWA's throat some 990 Convairs which Hughes was committed to buy to the tune of some $80 million.

When the captive customer wasn't any longer captive, he decided to subdue it and make it a captive once again, despite the voting trust, despite the independent board of directors, despite the new management, despite the fact that the Boeing contract was signed up and was to be carried out, and despite the technical judgment of TWA's [fol. 1054] technical people that they wanted the Boeing planes.

I might add that the history of the 990 program, as reported widely since, indicates how wise TWA was. It is an abysmal failure.

Now, because we wanted to put a stop to the Hughes efforts to sabotage the Boeing contract we made an application brought on by order to show cause to examine Hughes within the 20 days. By the time we got that argued on August 1st, Hughes had backed off, and he wasn't quite so vigorous with his efforts.

When Hughes realized on August 1st, which is the time we went before Judge Murphy, that he couldn't succeed in sabotaging the Boeing contract, and that his efforts to settle the litigation were not successful, and that it was going to proceed in open court, and the complaint was unsealed, we knew, or believed, that Hughes wasn't going to

run the risk at that stage of further efforts to sabotage the Boeing arrangement. We think that our lawsuit had a very healthy deterrent effect.

The next time we got into a problem of priority of depositions was because in furtherance of the efforts to settle the case, and by arrangement between counsel, we agreed [fol. 1055] on a stipulation which said that we will treat everybody as if they had proceeded in timely fashion under the rules so that the time that will elapse during the settlement talks will not prejudice anybody. And on the basis of that stipulation when the matter came before Judge Herlands ultimately with respect to some of the notices which Hughes Tool Company had served—they had only served some, not all that are on the list—Judge Herlands said, "In view of that stipulation I think I am bound to apply the normal priority rules; and so I am going to let them have priority as to their notices dated August 3rd," which again I say to your Honor are only a part of the notices that he ruled on.

When the matter came to your Honor, your Honor accepted it as it then stood, and quite rightly so, and at that time I, too, accepted it, feeling bound by the orders to which I have referred on the subject of priority.

However, I submit to your Honor—and this is my opposition to the application made by the additional defendants—I submit that as a matter of law and under well-settled law [fol. 1056] in this district, the record before you now establishes certain circumstances which warrant TWA in taking the deposition of Hughes immediately upon completion of the Tillinghast deposition.

Accordingly, our application is to terminate the Tillinghast deposition by Tuesday. In that connection I should point out to your Honor that your Honor's order contemplated about a week for four TWA witnesses. I should further say that that was the period of time initially selected by Hughes Tool Company on the basis of which they got their priorities.

Further, if they had proceeded to examine properly those depositions could have been completed in a week. But what happened was that although Mr. Davis told your Honor in chambers that he couldn't put an answer in, and he

couldn't make up his mind about these counterclaims until he had at least examined the four TWA people, and therefore your Honor directed that he would not have to put his answer in until he had examined the four TWA people, he suddenly found himself able, suddenly, quickly, out of the blue, to file the answer and so-called counterclaims before the Tillinghast deposition was even halfway through. [fol. 1057] A very skillful tactical move, but hardly in accordance with the representations made to this Court.

Why the rush about filing the counterclaims? Well, it is perfectly simple, I think, what he is up to. The effort here is to create a diversion in TWA's case, to slow that case down to a walk, to strangle, just as he strangled TWA in years past, as we have charged.

And now, by creating a procedural morass he hopes to bog down this case, and bog it down for good.

I am sure meanwhile he hopes he will get some pat on the back from the Civil Aeronautics Board for being willing to put some money into Northeast, and maybe get a whitewash that way. I don't know what he is up to. But I know one thing for sure, and it is obvious from this record, that what he is trying to do is prevent the TWA case from being progressed as it could be speedily and come to trial, as I hope it can.

The Tillinghast deposition, had it been taken on the issues raised by the complaint and the answering portion of the answer, could have been done easily in a day and a half to two days. Tillinghast became president of TWA [fol. 1058] in the spring of 1961. The complaint was filed on June 30, 1961. He has been examined in great detail about everything that happened before he became president up to the time he became president, while he was president, and that about 90 per cent of the deposition has had to do with things that happened after he became president and after the lawsuit was filed, all examination clearly designed to try and find some support for these so-called counterclaims.

So what counsel has done—and I submit this as to TWA, and I am not concerned about the additional defendants, they can take care of themselves—but as to TWA if the answer and counterclaim had been before your Honor when

you made your last order I believe you would have relied on the decisions in this district that say that when a plaintiff is confronted with a counterclaim this rule about defendant's priority of discovery does not apply because the assertion of the counterclaim against the plaintiff is a special circumstance under the decisions in this district, as I read them.

Therefore, I say as matters stand today on the record [fol. 1059] before your Honor there are special circumstances, and, therefore, I say having had two weeks of Tillinghast when he could have done it in two days, that we should be allowed to proceed with discovery against Hughes Tool Company, and I think that the only practicable solution to the administration of the case is to provide some series or program of alternating depositions along that line.

I would be very happy to have the additional defendants out of this case, and that isn't because I have reached a judgment as to whether there is any merit or not in anything Davis says about the additional defendants. I can say that on the basis of everything I have seen to date I see no basis for the assertion of the so-called counterclaims, certainly not against TWA. They are strictly phonies. The only counterclaim that seeks anything from TWA which might be called a counterclaim truly is the $170-odd thousand from TWA, and this is on the theory that he is entitled to double interest on some obligation of TWA's.

I am prepared to submit that matter on the papers to your Honor for a ruling, and if he is right we will pay the judgment within 24 hours. That has nothing to do [fol. 1060] with the rest of this mish-mash that he has come up with as a counterclaim. It is purely a question of construction of some documents.

TWA doesn't think he is entitled to the extra $76,000 in interest. He says he is. But other than that all he is doing is he is saying that since December of 1960, when the voting trust went into effect, this big conspiracy to take control of TWA away from Hughes and give it to the banks and the insurance companies has been in existence. If every word of that were true, if every single word

of it were true, it would not be a defense to any aspect of TWA's cause of action as alleged in this complaint. It is apples and oranges.

As a matter of fact, he has been kind enough to serve a derivative suit for TWA against these additional defendants so that TWA would get $115 million from Mr. Davis' client, and if he is right—I doubt that he is, from what I know to date, but if he is right we will get another $135 million from these additional defendants.

I would not protest TWA getting $280 million, but I don't want to have my lawsuit for TWA, which is what [fol. 1061] I am concerned with, ground to a halt and brought to a halt by the tactics that he is using. If he wants to sue them, he can sue them in some other case, not in my case.

In any event, if they are going to stay in the case, it seems to me that the whole posture of the case before your Honor has changed, and that your Honor should apply a rule of alternating depositions relying on the decisions in this district so that TWA should start with Hughes next week, when Tillinghast is through. That is, I believe, the only fair construction of the cases on a record like the one before you.

The Court: You say that the rule in this district is that where the defendant has served a counterclaim he loses his priority of deposition in so far as the counterclaims are concerned, and that the plaintiff made them proceed?

Mr. Sonnett: Yes, your Honor. There are decisions—

The Court: I don't know whether I should tell you this, but your firm submitted a brief just the opposite to me the other day.

Mr. Sonnett: Not in a case like this.

[fol. 1062] The Court: Paramount v. De Laurentis.

Mr. Sonnett: I don't know who wrote that brief, but let me say I have read Bromley's brief, and I say—

The Court: I don't know who wrote that brief. I read it yesterday, and I decided it. Maybe you ought to read the Law Journal.

Mr. Sonnett: In this case, it is hard even to read the morning papers.

On the basis of Bromley's brief you have this transparent attempt to make counterclaims against TWA. I say this is radically different from the other. On the state of this record I believe TWA is entitled to a fair chance for its discovery because the record has been radically changed and changed by action of the Hughes Tool Company alone, and was done at a time months or at least a month ahead of the time they said to you they would be ready to do it, and because Tillinghast has been examined for two weeks when a proper examination should be two days.

The Court: All right.

Mr. Sonnett: I hope I have made myself clear that I do not think that these additional defendants who were chal-
[fol. 1063] lenged with doing something wrong from December 1960 to-date belong in my case where I charge Hughes with violations of law which are very serious from 1939 to June of 1960. It is a case of apples and oranges, and he is slowing us down desperately in our case, which is all I am concerned with.

The Court: What I would like you to do is submit a short memorandum of law on this question of priorities. I am sure you don't want me to rely on the one I read yesterday in another case.

Mr. Sonnett: I am sure that one is not a situation like this.

The Court: I think it is.

Mr. Sonnett: You mean there were additional defendants?

The Court: No, there were not. Not additional defendants.

Mr. Sonnett: This is what I am relying on. If you take them out of this case, the additional defendants, I am prepared to go forward on the order and the schedule that you last signed. I am quite prepared to do that, because then it is the same case, but if they want to sue us for the $75,000, that's all right.

[fol. 1064] The Court: You will pay them?

Mr. Sonnett: I will pay them if they are entitled to it, and you say so. But while they are in the case—

The Court: Let me have that memorandum in the next couple of days.

Mr. Sonnett: Yes, your Honor.

The Court: Mr. Davis, you have been sort of quiet. But that is not a word of encouragement. I would like to finish by 12.30.

Mr. Davis: I think I will be finished by 12.30, your Honor.

For the record, my name is Chester C. Davis, and I am appearing on behalf of Hughes Tool Company.

I am really surprised at so many eminent counsel seeming to be so disturbed at a procedure which to me appears relatively simple. On this priority of discovery proceedings I think everyone recognizes that it involves a certain amount of discretion to be applied to the various circumstances presented to the Court. I believe there are decisions in this district which indicate that the Courts need not be slaves to the concept that a defendant normally is [fol. 1065] entitled to priority.

The reason for the development of that concept, as everybody recognizes, is under the new rules at the time the plaintiff forms a complaint and under the new rules of pleading he does not say what he is complaining of, and, therefore, the defendant needs to find out what it is that the complaint is all about, and is normally given priority.

I think this is applicable in this situation, also. Everybody recognizes everybody will have a chance to get all these facts they need before there is any judgment entered on whatever contentions are asserted by anyone. No one is going to be deprived of the fairness of justice. It is a question of getting the facts.

I am not going to rely on the general principle, which I am sure is also recognized by everyone here, that since this Court has delegated the discretion as to how these discovery procedures were to be conducted to a Special Master they should normally be left to interfere with the Special Master unless there is a clear abuse of discretion.

I should like to merely present some of the circumstances [fol. 1066] which are here present, and which to my mind clearly support the ruling and the fairness of the rulings made by the Special Master.

We have to start with the complaint. A complaint very artfully drawn but as vague and general as one can find, notwithstanding the number of pages which it runs. It doesn't say one single thing as to what it is they're complaining about, except allegedly it is a violation of the antitrust law. It doesn't refer to the CAB orders. All you can glean from it is that somehow or other the Tool Company, while it was in management, or presumably in control of TWA because of its 78 per cent stock ownership, that it used that control in an improper manner in connection with financing and furnishing of equipment, particularly the jet equipment. That comes out of the complaint and conclusions.

Also, some contentions that the Tool Company in 1961 wilfully and maliciously interfered with the business of TWA. Then some reference that a merger to be approved by CAB and the stockholders constituted some conspiracy in violation of the antitrust law. That is all the complaint says.

[fol. 1067] In that connection, may I also point out that there is no question that the defendants Equitable and Metropolitan and Irving are in control of TWA, were in control of TWA when this complaint was prepared and served on the Tool Company. Whether or not they deny exercising their control is a matter of fact to be established, but there is no question they are in charge of TWA today, assuming the 78 per cent stockholding. These people who sit right here.

Now, the complaint says nothing. An effort was made to obtain the deposition of Mr. Hughes out of turn. Judge Murphy denied that. The stipulation that was decided upon has nothing to do with anything except that the parties agreed to delay everything during the month of July so that when everything was resumed the same rules would apply, et cetera.

The question first came on before Judge Herlands at a time when the Tool Company quite properly based upon a completely vague complaint said:

> "We want to find out what it is they are complaining against us, and in order to do that we want to take the

[fol. 1068] deposition of TWA, the Metropolitan, the Equitable, Tillinghast, the list."

There is no question but we had a right to do that. It was bitterly opposed.

Now, on this scheduling—may I interrupt for one moment to point out Judge Herlands, in the course of the argument, said, "Why don't you gentlemen submit your respective proposed schedules."

These notices of deposition, your Honor, were not served or were not noticed in any particular order based upon the facts or circumstances which we had of knowing the best way to develop these facts and defending ourselves. Instead of following the practice in this district, including the one followed by Mr. Sonnett, of having all depositions returnable the same date and the same place as his were, one in California and one in New York the same day, we indicated we were prepared to take the deposition of one party and a week after the completion of that deposition to commence the next one, as a general scheme of what we were prepared to do. We were the ones who wanted to move expeditiously.

That complaint hurt the Tool Company before the CAB. [fol. 1069] The CAB is investigating the charges of this complaint on an entirely unrelated transaction. We were the ones interested in finding out the facts which supported this complaint.

Mr. Sonnett submitted to Judge Herlands a proposed schedule where he would start with Mr. Hughes, then we would take them on alternating schedules. We submitted a memorandum where we said the only schedule we submit is that we are permitted to take and discover the facts of all the people who we have noticed, and then TWA may discover from us.

Judge Herlands denied to adopt either schedule submitted to him, and the decision clearly stated the defendant was supposed to have priority as then noticed.

This proposition of people not knowing is the surprising thing. Notices and subpoenas duces tecum were served on the Equitable and Metropolitan and Dillon-Reed as of Sep-

tember. Judge Ryan thought it was going to be a big case, and should be assigned to one judge for all purposes, so Judge Ryan said, "Until I assign it to a judge for all purposes I am going to hold up everything." That stopped us [fol. 1070] from completing the service of subpoenas and it suspended the return date of those notices.

These gentlemen then took the position, legally quite correct, that they did not have to respond to these subpoenas duces tecum until the return date of the notices. Meanwhile, sure, they must have done something to gather the documents. Perhaps not through the particular individual counsel here present. Since last September. But they took the position, which they had a right to, of not giving us anything until the return date of the deposition.

Obviously, the purpose of getting documents is to enable an expeditious deposition, whoever it may be that has to be examined orally. In any event, everybody is in accord that Judge Herlands decided in this case that the Tool Company was to have priority in the depositions which had been noticed, and we have not changed that. We haven't added to it. We haven't added a single individual or party to it. It is the same people.

I do not believe everybody is construing what the Special Master has been doing as something which he feels bound to do not to deviate from the order or the time of the sched- [fol. 1071] ule which is annexed to your Honor's order. He has construed that order, I think, the way it was intended, and certainly in accordance with what it says—namely, that the Tool Company is to proceed expeditiously and as much as possible maintain a scheduled time and keep going.

The Special Master did indicate at an appropriate time he will undertake a showing of good cause for an alteration of the order of taking those depositions. After all, the responsibility is upon counsel for the Tool Company to develop the facts in its defense.

Now, knowing that the contention of the Tool Company was that these parties had acted together in what we claim to be an improper and unlawful manner to acquire control of TWA, we did put informally those persons on notice that while they were being noticed for their deposition as witnesses to protect themselves because we had in mind the

possibility that the same facts which constitute a defense to this complaint might very well also constitute the basis for futher additional relief.

[fol. 1072] Mr. Kaminer, I believe, is in error when he says that this answer and the counterclaim merely say that TWA has been injured further and more than the alleged injury that TWA is asserting against the Tool Company. That answer, your Honor, sets forth facts in considerable detail which, if true, constitute a defense.

If TWA was deprived of equipment, if the financing of TWA injured TWA, as is claimed in the complaint and we can show that that was the result of the course of conduct, or a conspiracy, or a monopoly, by these other persons, if only on the issue of damages as to did we cause the injury or did they, the same set of facts, plus the addition of the prayer for relief, might very well also constitute a basis for additional relief.

Whether we call it counterclaims, or affirmative defenses, is not particularly important. We have alleged facts in our answer. It is wrong, it is specific. I do not believe that Judge Bromley really means it when he says "We don't know what we are defending against."

I submit, your Honor, that the answer that we have served is about as detailed a pleading as has been filed in [fol. 1073] this court for some time.

Your Honor is fully aware of the fact that counsel for TWA was pressing us for putting in an answer as soon as possible, and your Honor indicated that even though we have a motion to dismiss this complaint pending which has not come into issue for a number of reasons that it seemed the time was approaching when an answer ought to be put in, and I expressed in chambers at that time my concern that these witnesses that had been noticed perhaps should know the nature of the claim that we were asserting.

Had we filed to serve those papers as promptly as we could, I could have understood a sense of unfairness or injustice to require these persons to be deposed to produce these documents which will condemn them and yet be in the dark as to the nature of the claim that the Tool Company intended to assert against them, and derivatively on behalf of TWA, because today there is only one person who is

really interested in TWA and that is the 78 per cent stockholder. The others don't have any interest in TWA except possibly to maintain the captive market for financing, or [fol. 1074] for something else.

All that has happened is that we have told these same witnesses, the same persons, who have testified to exactly the same thing, that will produce exactly the same documents, we have put them on a formal notice as to what the nature of our contention is. Why that creates any sense of unfairness, injustice, or depriving anybody of any rights I simply do not understand.

Mr. Sonnett said—I presume he is representing TWA and should be interested in this derivative action—he says, "Go ahead, but start it in another action."

Suppose we had done that on the same facts. We would still be taking the depositions of these parties, obtaining the same documents. Should we move to consolidate for trial afterwards?

They say, "Ah, yes, but had that been done they would have had an opportunity to take the deposition of the Tool Company first."

I have no question in my mind if that had been the mechanical posture of the case that we would have been before your Honor and said, "Your Honor, obviously we can't be [fol. 1075] in two places at once. We are engaged in taking the deposition pursuant to the action commenced by this complaint. We are pursuing it without delay."

And they will have to wait their turn. That is all we are talking about.

Now, quite apart from the fact that the answer is quite detailed, as distinguished from the complaint, detailed in facts, we must also bear in mind the contention of the answer of the Tool Company which is a defense as well as establishing, we believe, the basis for affirmative relief—that there is a conspiracy, certainly concerted action among these various defendants. These are not bare, naked allegations.

The deposition taken to date, the documents obtained to date, establish a course of conduct which unquestionably requires an inquiry.

May I suggest, your Honor, where do they think they are going to find out their misdeeds, in our files, through our people, or in their files? Where are the facts to be found as to whether or not there has been an unlawful course of conduct on the part of these additional parties? Through the [fol. 1076] Tool Company or through their own files and through their own witnesses? That is what they want to avoid. I understand why they want to avoid it.

There would have been technically the basis of making such a contention if the answer we had filed had been one as bare of facts as the complaint is. We took great pains to avoid that charge.

Judge Bromley has indicated or referred to a Mr. Thomas as an example where he believed that he is being prejudiced if the deposition of Mr. Thomas should take place before he has had an opportunity to examine the Tool Company, and he said because the answer that we filed contends and asserts facts to support the contention that Mr. Oates and Mr. Hagerty, also someone at Dillon-Reed, had conversation with Mr. Thomas which we contend encouraged Mr. Thomas to leave TWA in 1960.

We have to find some place to find facts. He is as a good a place as any.

The other is to go into an examination of Mr. Oates, Mr. Hagerty, and Dillon-Reed. These are the two places to find them. We can't answer that question. I don't see anything [fol. 1077] difficult about it.

I might as well say on this point, while on the subject of Mr. Thomas, it might be a good idea perhaps to take the deposition of some of these—or to change the order in which the deposition is being taken. I do have in mind making an application to the Special Master at an appropriate time that I believe I have the basis for now for changing the particular order of the depositions to be taken because I believe that the order of your Honor, with respect to taking these depositions, was that we were to keep at it without wasting time because I believe the responsibility for an orderly development of the facts is on counsel, and wholly on counsel.

Certainly, it is not the responsibility of opposing counsel to develop or establish the order in which the defendant is

to develop the facts in order to defend himself, and we are defending ourselves.

So I respectfully submit, your Honor, if I may add one more point, that your Honor may not be fully aware unless you have had an opportunity to read this rather lengthy [fol. 1078] answer.

The Court: Nobody has taken the trouble to give me a copy. I read about it in the newspaper. That's how I know what is going on in this lawsuit.

Mr. Davis: It has been filed, I believe, your Honor.

The Court: It hasn't come upstairs. I signed an order for you this week, Miss Lea, but you didn't leave a copy with me.

Miss Lea: Yes, I did. I left an extra copy in chambers.

The Court: I will go look for it.

Mr. Davis: I apologize if we have not, and will see it is done immediately.

You will note in there that there is a contention that we assert quite seriously that the very commencement of this action by TWA was intended in furtherance of these other objectives.

Mr. Sonnett: Where do you say that in this answer? Point it out. That is a misstatement.

The Court: Let Mr. Davis finish his argument.

[fol. 1079] Mr. Davis: I submit that no matter which way you look at this the answer always comes out to the same place. We responded to an action commenced by TWA. TWA is in control of the same people. We obtain a priority, we are in the process of taking deposition. We ought to have an opportunity to complete the development of the facts.

The incidental fact that these same individuals who were noticed for their deposition covered by the decision by Judge Herlands now have been put on notice that they should defend themselves and protect themselves, I do not think puts them in a worse position, it puts them in a better position than they were in before we named them. If they want or need more time for replies, I am sure they will get more time to put in a reply. I think they may have difficulty in replying, because our answer is so detailed it

is going to be difficult for them to reply to the facts alleged there in the manner in which I know they want to answer.

The Court: Have you considered the limitation of the deposition of these parties to matters raised solely by the [fol. 1080] complaint and not in counterclaims?

Mr. Davis: The Special Master raised the question should I get into an area that does not appear to be addressed to a defense to the complaint then a question may arise. We believe that we can establish that without any difficulty, and will establish it to the Special Master's satisfaction. I am confident that all or substantially all of the depositions that we will engage will relate to defenses to the complaint, construed broadly to be sure, since the complaint is very broad.

Now, should we reach the posture where it may be said that a certain amount of this inquiry appears to have more bearing on establishing a cause of action against these additional defendants rather than establishing the basis for defense, bearing in mind all the time if they can prove they did it, we didn't do it, we have a practical question there. Should we at that point stop for the purpose of starting the process all over again in order to give them what, this so-called priority?

[fol. 1081] The Court: It is a variable right, isn't it, Mr. Davis?

Mr. Davis: It is when you don't know what you are charged with.

The Court: You fought for it.

Mr. Davis: I did, your Honor, and I was successful, may I submit, primarily because the complaint was so barren of any information, any factual conclusions.

I respectfully submit, your Honor, that you can read that complaint, and I will use it as a guide in the future, I think it is an extremely well-drawn complaint, but I defy anybody to figure out what it is that the Hughes Tool Company was suppose to have done, but from the conclusions, to justify the complaint. You can look at it from beginning to end, you will find something in one of the briefs submitted in one of these pretrial conferences, but you cannot find the factual contention which presumably must exist if the complaint is any good at all that what took place was not

within the contemplation of the CAB order which approved every transaction involving more than $200 between the Tool Company and TWA, and if those transactions were approved by the CAB the antitrust laws are not applicable, [fol. 1082] and that is the only basis of jurisdiction of this Court.

You can look at that complaint from beginning to end, and I defy anyone to be in a position to defend themselves or to know what it is that they are talking about, and the briefs that have been submitted in one of those pretrial conferences had bold assertions that everything was being done for some purpose or motive, allegedly unlawful, but what is it that we are supposed to have done that was not covered by a CAB order? That does not appear on the face of the complaint.

What it is that constituted this wilful and malicious interference in the business—

The Court: We will leave that for motions of summary judgment which you are threatened with.

Mr. Davis: That is not entirely out of the ball park, either.

The Court: I didn't knock it out of the ball park. I said we agreed about six months ago you couldn't move for a summary judgment just on the complaint, and that under the decisions of our Court of Appeals you have to practically wait until all deposition proceedings were completed [fol. 1083] before the Court thinks it is proper to entertain a motion for summary judgment. I didn't foreclose you, I just said we will get to that discussion later on.

Mr. Davis: I appreciate that, your Honor, and I think we all agree it is a difficult motion to support and, therefore, one that should not be made hastily.

I do think that there is a technical deficiency in the complaint in the respect that it does not allege a violation of CAB orders. I think we also have the question of primary jurisdiction involved.

The Court: Make that for a separate application on papers.

Judge Bromley, what time do you want for your motions?

Mr. Bromley: Ten days, your Honor.

The Court: You can have as much time as you want because the depositions are going to continue.

Mr. Bromley: Ten days.

The Court: All right. You fix any day you want with counsel, and arrange for exchange of papers, and notify my [fol. 1084] chambers, and we will have a hearing.

Mr. Davis: The only thing I may request in that, your Honor, I am sure Judge Bromley wouldn't object to it, and that is to give me an adequate amount of time to answer after receiving his papers, particularly since the Special Master is keeping my nose to the grindstone a little bit and I do need some consideration on time to reply.

Mr. Bromley: You will never have time enough to give a good answer. I will give you all the time you want, though.

Mr. Davis: Thank you, Judge.

Your Honor, do you want that reference Mr. Sonnett asked about?

The Court: No.

Mr. Browley: I must deny, if it please your Honor, that my clients control TWA. Their sole power is to appoint voting trustees.

Now, although the counterclaim is a very long and voluminous document it is so distorted, confused and inaccurate that the need to clarify it by discovery is far greater than is Mr. Davis' need against a notice form of pleading which the rules allow such as this complaint is, so the wealth [fol. 1085] of detail that he has put in his counterclaim as contrasted with the bare bones of the complaint only adds to our burden, it doesn't lessen it, because we have to sift out all the inaccuracies, distortions, and omissions by discovery in order even to be able to answer the charges.

The Court: May I suggest this. I understand Mr. Kaminer and Mr. Stewart and Mr. Neaher—I suggest that you arrange a date for a hearing allowing sufficient time for the preparation and service of your papers, and preparation and service of the answering papers by defendant, and if you want time to reply, and just check with my chambers as soon as you have a date fixed just to make sure that I set it aside and am free.

Mr. Sonnett, you are going to give me a memorandum on the decisions in this district on priority?

Mr. Sonnett: As applied to this case; yes, your Honor. And may I simply invite your Honor's attention to the fact that in the second paragraph of his opinion and order of August 14, 1961, Judge Herlands specifically referred to the understanding of counsel.

[fol. 1086] The Court: Mr. Sonnett, we have gone through this every time we sit down. We go back to the interpretation of what happened before Judge Herlands. We have gone past that. We have an order set. You have a Special Master who, in my opinion, is one of the ablest lawyers in the United States, presiding over your deposition proceeding. We have an order set, and we should go on instead of having to go back to decide what was said before Judge Herlands.

Mr. Sonnett: I believe that is so, and I hope will be so, and that is why I urge you to put in the order as you should have originally, making it an alternating program.

Mr. Bromley: Does your Honor—we have a memorandum of law which we have filed and which I assumed you have.

The Court: I received it this morning. I have a memorandum from you, and I received one from Mr. Davis this morning, also.

Can I have yours on Monday, Mr. Sonnett?

Mr. Sonnett: Yes, your Honor.

The Court: It shouldn't be too difficult.

Mr. Sonnett: No, it will not be difficult.

[fol. 1087] Mr. Kaminer: May I hand up our bare bone papers just for the record? There is one thing which concerns me, and I am not sure, perhaps I misunderstood your Honor.

Did you—

The Court: First, Mr. Neaher, did you have any papers you wanted to submit, or do you want to rely on the record?

Mr. Neaher: I would like to rely on the record, but still reserve the right to submit a formal notice of motion.

Mr. Kaminer: Your Honor said depositions are going to go on. Are we considered from now on bound by them? I don't know what you mean.

The Court: I would assume you have to complete Mr. Tillinghast, you have two or three other TWA witnesses.

Mr. Sonnett: Tillinghast has had about ten days, and counsel has declined as yet to give an estimate of when he will be through.

The Court: I don't have a copy of the schedule before me, but I don't think anybody is involved who are related to the defendants.

Is Mr. Thomas—no, Mr. Thomas is now an individual, is [fol. 1088] he not?

Mr. Sonnett: The difficulty, your Honor, is that the subject matter of the Tillinghast examination, which has extended far beyond what it could have been, a day or two, is the so-called counterclaim approach that Mr. Davis has now invoked into the case, so that unless—if he is allowed to go on examining in aid of his counterclaims, and at his present rate—

The Court: Has the Special Master made any ruling as to the scope of the depositions?

Mr. Sonnett: The Special Master has raised this very point and suggested this is something that counsel should consider, and then said something to the effect, "Well, it might be rather difficult to administer," and I think there is something to that point, but I think that it is clear because I argued to him this very point. I have said to him, in all good faith, the deposition of Tillinghast could have been completed in two days, because he is a witness in the first six months of 1961, that is all he knows anything about. But instead of that we have had extensive day after day after day about events post-filing of the complaint designed [fol. 1089] to establish this so-called conspiracy which in its very inception is supposed to have started in September, 1960, and our complaint covers 1939 through the period to June 30, 1961, so we have had nothing by way of what is really involved in the case except the last six months of it.

The Court: When the schedule of witnesses, Mr. Kaminer, or Judge Bromley, or Mr. Stewart, or Mr. Neaher, is so arranged that one of your clients has been scheduled, then I suggest you make application to the Special Master, or to me, rather to the Special Master, because he is com-

pletely competent to handle the problem, but I want these depositions to continue as much as possible. I want to get this case moving and disposed of.

Mr. Kaminer: Here is what I was going to suggest as a practical matter to avoid making an awful lot of applications to your Honor and to the Special Master. While your Honor is considering this question of priority and modification of that order, and your Honor will have to consider the motions to dismiss the joinder, we certainly do not object to the depositions going on as far as TWA witnesses are concerned, but we want to be assured, first of all, that [fol. 1090] there will be substantial time in which we can prepare our witnesses and go over all the facts and learn about all these documents, and I think your Honor only can indicate that now because that seems to me—

The Court: Well, I think you have a copy of the order, and I don't have a copy of it.

Mr. Kaminer: One of my witnesses is scheduled for March 1st, which is next week.

The Court: You have Charles Thomas, you have Bank of America, Bankers Trust, Morgan Guaranty Trust, the Mellon Bank. Up to that point you have no witness whose employer has become a party, right?

Mr. Kaminer: That's correct, your Honor.

The Court: I will have this decision out next week.

Mr. Davis: Your Honor, may I say that I do expect to make an application to the Special Master with respect to this order. I can't, of course, make any representation to the likely result, but that may help or give Mr. Kaminer a different basis for making an application.

The Court: Let's proceed until we are actually faced with the problem.

[fol. 1091] Mr. Kaminer: Very well, your Honor.

(Whereupon, at 12.40 o'clock p.m. the proceeding was concluded.)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 1212] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 61-2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, et al., Additional Defendants on Counterclaims.

INTERROGATORY PROPOUNDED BY PLAINTIFF TRANS WORLD AIRLINES, INC.—Filed May 4, 1962

Now comes plaintiff Trans World Airlines, Inc., and hereby propounds to defendant Hughes Tool Company (herein Toolco) the following interrogatory pursuant to the orders of the Special Master, dated April 17 and April 30, 1962, and under Rule 33 of the Federal Rules of Civil Procedure to be answered under oath within fifteen (15) days from the date of service hereof by an officer of Toolco.

Interrogatory

1. State whether any officer, director or attorney of Toolco has any knowledge, information or belief as to:

(a) Where Mr. Howard R. Hughes (herein Hughes) has been during the last 30 days prior to the date hereof;

[fol. 1213] (b) Where Hughes is at the present time;

(c) Where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962.

2. If the answer to any of the parts of question 1 above is in the affirmative, state

(a) As to 1(a) above, where Hughes has been during the last 30 days prior to the date hereof, giving sufficient information to have enabled one, not otherwise having knowledge of such facts, to have served process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location;

(b) As to 1(b) above, where Hughes is at the present time, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his street address, including city, county, state and country, and including the exact location at such street address, such as room number and location; and

(c) As to 1(c) above, where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location.

[fol. 1214] 3. If the answer to any of the parts of question 1 above are in the negative, state the extent to which inquiry has been made to support the negative reply.

4. State whether Nadine Henley, Kay Glenn, F. William Gay, John Holmes, Michael Conrad, Robert Marsh, Sam Barber, Grant G. Horr, Joel L. Boyce and Robert Maheu, employees of or consultants to Toolco, have any knowledge, information or belief as to:

(a) Where Hughes has been during the last 30 days prior to the date hereof;

(b) Where Hughes is at the present time; and

(c) Where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962.

5. If the answer to any of the parts of question 4 above is in the affirmative, state

(a) As to 4(a) above, where Hughes has been during the last 30 days prior to the date hereof, giving sufficient information to have enabled one, not otherwise having knowledge of such facts, to have served process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location;

(b) As to 4(b) above, where Hughes is at the present time, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his [fol. 1215] street address, including city, county, state and country, and including the exact location at such street address, such as room number and location; and

(c) As to 4(c) above, where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his street address, including city, county, state and country, and including the exact location at such street address, such as room number and location.

6. If the answer to any of the parts of question 4 above are in the negative, state the extent to which inquiry has been made to support the negative reply.

7. State whether any of Toolco's employees, agents, and/or representatives, including but not limited to those persons employed by Toolco in Los Angeles, specifically at 7000 Romaine Street and 915 N. Highland Avenue, who, during the year preceding the date hereof, have performed

services of a personal nature or otherwise directly for Hughes, have any knowledge, information or belief as to:

(a) Where Hughes has been during the last 30 days prior to the date hereof;

(b) Where Hughes is at the present time;

(c) Where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962.

[fol. 1216] 8. If the answer to any of the parts of question 7 above is in the affirmative, state

(a) As to 7(a) above, where Hughes has been during the last 30 days prior to the date hereof, giving sufficient information to have enabled one, not otherwise having knowledge of such facts, to have served process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location;

(b) As to 7(b) above, where Hughes is at the present time, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his street address, including city, county, state and country, and including the exact location at such street address, such as room number and location; and

(c) As to 7(c) above, where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his street address, including city, county, state and country, and including the exact location at such street address, such as room number and location.

9. If the answer to any of the parts of question 7 above are in the negative, state the extent to which inquiry has been made to support the negative reply.

[fol. 1217] 10. State the name of every person who participated in the preparation of the answers to the foregoing questions.

Cahill, Gordon, Reindel & Ohl, Attorneys for Plaintiff, Trans World Airlines, Inc., Office and P. O. Address, 80 Pine Street, New York 5, New York.

To:

Hon. J. Lee Rankin, Special Master, 36 West 44th Street, New York, New York.

Chester C. Davis, Esq., Attorney for Defendant, Hughes Tool Company, 120 Broadway, New York 5, New York.

Winthrop, Stimson, Putnam & Roberts, Attorneys for Additional Defendants, Irving Trust Company and Ben-Fleming Sessel, 40 Wall Street, New York 5, New York.

Cravath, Swaine & Moore, Attorneys for Additional Defendants, Equitable Life Assurance Society of the United States, et al., 1 Chase Manhattan Plaza, New York 5, New York.

Dunnington, Bartholow & Miller, Attorneys for Additional Defendant, Dillon Read & Co. Inc., 161 East 42nd Street, New York 17, New York.

Chadbourne, Parke, Whiteside & Wolff, Attorneys for Additional Defendant, Charles C. Tillinghast, Jr., 23 Broadway, New York 4, New York.

[fol. 1218] Affidavit of Service (omitted in printing).

[fol. 1220] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civil Action No. 61-2324

TRANS WORLD AIRLINES, INC., Plaintiff,

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—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, et al., Additional Defendants on Counterclaims.

INTERROGATORY PROPOUNDED BY PLAINTIFF TRANS WORLD AIRLINES, INC.—Filed May 4, 1962

Now comes plaintiff Trans World Airlines, Inc. and hereby propounds to defendant Raymond M. Holliday (herein Holliday) the following interrogatory pursuant to the orders of the Special Master, dated April 17 and April 30, 1962, and under Rule 33 of the Federal Rules of Civil Procedure to be answered under oath within fifteen (15) days from the date of service hereof by Holliday.

Interrogatory

1. State whether Holliday has any knowledge, information or belief as to:

(a) Where Mr. Howard R. Hughes (herein Hughes) has been during the last 30 days prior to the date hereof;

[fol. 1221] (b) Where Hughes is at the present time;

(c) Where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962.

2. If the answer to any of the parts of question 1 above is in the affirmative, state

(a) As to 1(a) above, where Hughes has been during the last 30 days prior to the date hereof, giving sufficient information to have enabled one, not otherwise having knowledge of such facts, to have served process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location;

(b) As to 1(b) above, where Hughes is at the present time, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to his street address, including city, county, state and country, and including the exact location at such street address, such as room number and location; and

(c) As to 1(c) above, where Hughes will or presently intends to be during the period from the date hereof until July 1, 1962, giving sufficient information to enable one, not otherwise having knowledge of such facts, to serve process upon Hughes, including but not limited to the street address, including city, county, state and country, and including the exact location at such street address, such as room number and location.

[fol. 1222] 3. If the answer to any of the parts of question 1 above are in the negative, state the extent to which inquiry has been made to support the negative reply.

4. State the name of every person who participated in the preparation of the answers to the foregoing questions.

Cahill, Gordon, Reindel & Ohl, Attorneys for Plaintiff Trans World Airlines, Inc., Office and P. O. Address, 80 Pine Street, New York 5, New York.

To:

Hon. J. Lee Rankin, Special Master, 36 West 44th Street, New York, New York.

Chester C. Davis, Esq., Attorney for Defendant, Raymond Holliday, 120 Broadway, New York 5, New York.

Winthrop, Stimson, Putnam & Roberts, Attorneys for Additional Defendants, Irving Trust Company and Ben-Fleming Sessel, 40 Wall Street, New York 5, New York.

Cravath, Swaine & Moore, Attorneys for Additional Defendants, Equitable Life Assurance Society of the United States, et al., 1 Chase Manhattan Plaza, New York 5, New York.

Dunnington, Bartholow & Miller, Attorneys for Additional Defendant, Dillon, Read & Co. Inc., 161 East 42nd Street, New York 17, New York.

Chadbourne, Parke, Whiteside & Wolff, Attorneys for Additional Defendant, Charles C. Tillinghast, Jr., 23 Broadway, New York 4, New York.

[fol. 1223] Affidavit of Service (omitted in printing).

[fol. 1491] [File endorsement omitted]

[fol. 1494]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, METROPOLITAN LIFE INSURANCE COMPANY, IRVING TRUST COMPANY, ERNEST R. BREECH, DILLON, READ & CO., INC., BEN-FLEMING SESSEL, JAMES F. OATES, JR., HARRY C. HAGERTY and CHARLES C. TILLINGHAST, JR., Additional Defendants on Counterclaims.

AFFIDAVIT—Dated August 28, 1962

State of New York,
County of New York, ss.:

Robert G. Zeller, being duly sworn, deposes and says:

1. I am a member of the firm Cahill, Gordon, Reindel & Ohl, attorneys for the plaintiff, Trans World Airlines, Inc., ("TWA"), and am familiar with all prior proceedings had herein. I make this affidavit in support of plaintiff's motion for relief pursuant to Rule 37(d) of the Federal Rules of Civil Procedure.

2. By orders of this Court dated July 12, 1962, and July 26, 1962, the defendant, Hughes Tool Company [fol. 1495] ("Toolco"), was directed to answer on or before August 27, 1962, certain interrogatories propounded by plaintiff on May 2, 1962, pursuant to Rule 33 of the Federal Rules of Civil Procedure.

3. Subsequent to the issuance of such orders but prior to August 27, 1962, certain correspondence was had between and among counsel for TWA, counsel for Toolco and the Court, copies of which correspondence are annexed hereto as Exhibit A (letter dated August 1, 1962 from Chester C. Davis, Esq. to John F. Sonnett, Esq.); Exhibit B (letter dated August 1, 1962 from Mr. Davis to Hon. Charles M. Metzner, U.S.D.J.); Exhibit C (letter dated August 2, 1962 from Robert G. Zeller, Esq. to Judge Metzner); Exhibit D (letter dated August 20, 1962 from Mr. Zeller to Judge Metzner); Exhibit E (letter dated August 21, 1962 from Judge Metzner to Mr. Davis); Exhibit F (letter dated August 21, 1962 from Mrs. Lola Lea to Mr. Zeller); Exhibit G (letter dated August 22, 1962 from Mr. Zeller to Mrs. Lea); Exhibit H (letter dated August 24, 1962 from Mrs. Lea to Mr. Zeller); and Exhibit I (letter dated August 24, 1962 from Mr. Zeller to Mrs. Lea).

4. When no answers to the interrogatories had been served by the close of business on August 27, 1962, I asked Mr. Chester C. Davis, counsel for Toolco, when I could expect to be served with answers to the interrogatories. Mr. Davis advised me that Toolco did not intend to answer such interrogatories.

5. On August 28, 1962, I received a letter from counsel for Toolco, a copy of which is annexed hereto as Exhibit [fol. 1496] J (letter dated August 27, 1962 from Mrs. Lea to Mr. Zeller); and on that same day sent to counsel for Toolco an answering letter, a copy of which is annexed hereto as Exhibit K (letter dated August 28, 1962 from Mr. Zeller to Mrs. Lea).

Robert G. Zeller

Subscribed and sworn to before me this 28th day of August, 1962.

Thomas J. Cerna, Notary Public, State of New York, No. 41-0607760. Qualified in Queens County. Certificate filed in New York County, Term Expires March 30, 1963.

[fol. 1497]

EXHIBIT A TO AFFIDAVIT

(Letterhead of Chester C. Davis, New York 5, N. Y.)

August 1, 1962

Re: *TWA* v. *Hughes Tool Company, et al.*

John F. Sonnett, Esquire
Messrs. Cahill, Gordon, Reindel & Ohl
80 Pine Street
New York 5, New York

Dear Mr. Sonnett:

This is to confirm that I am authorized to accept process on behalf of Howard R. Hughes for his appearance as a witness on deposition in the above-entitled matter. In order to avoid further effort and expense by TWA to locate Mr. Hughes, I will acknowledge service on his behalf if you will deliver appropriate papers to me.

It should be understood that the foregoing is solely for the purpose of effecting service and is without prejudice to any and all rights of Mr. Hughes, the Hughes Tool Company or Raymond M. Holliday relating to the calling of Mr. Hughes as a witness on deposition.

Very truly yours,

/s/ CHESTER C. DAVIS
Chester C. Davis

4:3

[fol. 1498]

EXHIBIT B TO AFFIDAVIT

[Stamp—Received—C. G. R. & O.—Aug 2 1962—Referred to Mr. Sonnett]

(Letterhead of Chester C. Davis, New York 5, N. Y.)

August 1, 1962

Re: *TWA* v. *Hughes Tool Company, et al.*

Honorable Charles M. Metzner
United States District Judge
United States Court House
Foley Square
New York 7, New York

Dear Judge Metzner:

In connection with the interrogatories served by TWA on the Hughes Tool Company for the purpose of locating Howard R. Hughes in order to serve him with a witness subpoena to appear on deposition, there is enclosed a copy of a letter to Mr. Sonnett advising him that I am authorized to accept service of such process on behalf of Mr. Hughes.

Counsel for TWA has been questioning my authority to accept service on behalf of Mr. Hughes and has been insisting that I obtain written confirmation thereof. I am, therefore, enclosing a photocopy of such written authorization which I heretofore requested, and which I recently received.

It is respectfully requested that the enclosed photocopy of the authority which I received from Mr. Hughes be kept confidential and not be made a part of the record.

Very truly yours,

/s/ CHESTER C. DAVIS
Chester C. Davis

CC: Counsel for all Parties
(without enclosures)

4:2

[fol. 1499]

EXHIBIT C TO AFFIDAVIT

August 2, 1962

Re: *TWA* v. *Hughes Tool Company, et al.*

Dear Judge Metzner:

In Mr. Sonnett's absence, I received this morning from counsel for Toolco a copy of a letter dated August 1, 1962 written to you, together with a letter of the same date to Mr. Sonnett advising him that Toolco's counsel was now authorized, presumably by Mr. Hughes, to accept service of process on behalf of Mr. Hughes for his appearance as a witness on deposition in this case. Although Toolco's counsel, Mr. Davis, apparently sent to you a copy of written confirmation of his authorization, no copy of the written confirmation was sent to us.

I called Mr. Davis' office and in his absence spoke to Mr. Maxwell Cox to request a copy of that confirmation. I told Mr. Cox that I had noted Mr. Davis' desire that the confirmation be kept confidential and offered to treat our copy of such confirmation as a confidential document under the terms of the Special Master's order of March 21, 1962 relating to confidential documents. Mr. Cox advised me that he was unable to permit me either to look at the authorization or to furnish me a copy of it.

As Mr. Sonnett pointed out in the argument before the Special Master on July 31, 1962, the crux of this matter is that any authorization by Mr. Hughes to counsel must be irrevocable or it is apt to prove meaningless.

[fol. 1500] It was for this reason that we prepared the proposed stipulation and form of order which was submitted to Toolco's counsel on July 31, 1962, but which Toolco's counsel refused to consider. I understand that that proposed stipulation and form of order have been transmitted to you along with the transcript of the argument on

that day. Under the circumstances, our position must remain as stated at that time.

Very truly yours,
Robert G. Zeller

Hon. Charles M. Metzner
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York 7, New York

cc: Special Master
All Counsel of Record

[fol. 1501]

EXHIBIT D TO AFFIDAVIT

August 20, 1962

Re: *TWA* v. *Hughes*

Dear Judge Metzner:

Last week we learned from what we consider a reliable source that Howard R. Hughes was at the Beverly Hills Hotel in Los Angeles, California. On Friday, August 17th, attempts to serve Mr. Hughes with a subpoena duces tecum under Rule 45 F.R.C.P. were made both by private process servers and by the United States Marshal. These attempts were unsuccessful. We were advised by the Marshal that he was referred to the Hughes Tool Company office at 7000 Romaine Street, Los Angeles, California and was told by that office that service of such process could be made only on Mr. Davis of New York.

We expect to try again to serve Mr. Hughes when we receive on Monday, August 27th, the answers of Hughes Tool Company to our interrogatory as to Mr. Hughes' whereabouts.

Very truly yours,

Robert G. Zeller

Hon. Charles M. Metzner
United States District Judge
Southern District of New York
United States Court House
Foley Square
New York 7, New York

cc: Chester C. Davis, Esq.

RGZ:neb
Mailed 8/20/62

[fol. 1502]

EXHIBIT E TO AFFIDAVIT

(Letterhead of United States District Court,
New York 7, N. Y.)

August 21, 1962

Mr. Chester C. Davis
120 Broadway
New York 5, New York

Re: *TWA* v. *Hughes Tool Co.*

Dear Mr. Davis:

This will confirm the telephone conversation today of my secretary, Miss Lowers, with Mrs. Lea of your office.

Upon my return from vacation I found your letter of August 1st with its enclosures of a photocopy of what you say is a written authorization from Mr. Hughes to accept service on his behalf of a witness subpoena in the above entitled matter and a copy of your letter to Mr. Sonnett

dated August 1st, 1962. In view of your insistence that the photocopy of the authority be kept confidential and not be made part of the record and your failure to furnish a copy to Mr. Sonnett, I must proceed on the basis that it is not properly before the court. Consequently, I am returning to you said photocopy.

In the circumstances, I will expect that you will comply with the order of the court of July 26th, 1962.

Whatever further conversations you wish to have with Mr. Sonnett or the Special Master on this matter are solely within your discretion.

Very truly yours,

/s/ CHARLES M. METZNER

CMM:dl

cc: Counsel for all parties
Special Master

[fol. 1503]

EXHIBIT F TO AFFIDAVIT

(Letterhead of Chester C. Davis, New York 5, N. Y.)

August 21, 1962

Robert G. Zeller, Esquire
Cahill, Gordon, Reindel & Ohl
80 Pine Street
New York 5, New York

Dear Mr. Zeller:

This is to confirm receipt, by mail, of a copy of your letter of August 20, 1962 to Judge Metzner and of a copy of TWA's Notice of Taking Deposition of Howard R. Hughes, as a witness, in Los Angeles, California, on September 24, 1962. I assume that the Notice was filed for the purpose of obtaining the subpoena referred to in the letter.

Mr. Davis has asked me to advise you that upon his return to New York, he will be glad to make arrangements with you for the service of the subpoena on him, which he is authorized to accept on behalf of Mr. Hughes.

Very truly yours,

/s/ Lola S. Lea
Lola S. Lea

cc: Honorable Charles M. Metzner
United States District Judge
United States Courthouse
Foley Square
New York 7, New York

J. Lee Rankin, Esquire
36 West 44th Street
New York 36, New York

[fol. 1504]

EXHIBIT G TO AFFIDAVIT

August 22, 1962

Re: *TWA* v. *Hughes*

Dear Miss Lea:

This will acknowledge receipt of your letter of August 21st. For the reasons stated in my letter of August 2nd to Judge Metzner, and stated earlier at the hearing before the Special Master on July 31st, we do not believe that our client's interest would be adequately protected by relying upon service of the Hughes subpoena on Mr. Davis in the absence of irrevocable authority from Mr. Hughes along the lines of that proposed in our draft stipulation. So far as we are aware, that irrevocable authority has not been granted.

We therefore await with great interest the service on August 27th of Toolco's answers to our Interrogatory as to Mr. Hughes' whereabouts.

Very truly yours,
Robert G. Zeller

Lola S. Lea, Esq.
Chester C. Davis
120 Broadway
New York 5, N.Y.

cc: Honorable Charles M. Metzner
J. Lee Rankin, Esq.

[fol. 1505]

EXHIBIT H TO AFFIDAVIT

(Letterhead of Chester C. Davis, New York 5, N. Y.)

BY HAND. August 24, 1962

Re: *TWA* vs. *Hughes Tool Company, et al.*

Robert G. Zeller, Esq.
Cahill, Gordon, Reindel & Ohl
80 Pine Street
New York 5, N. Y.

Dear Mr. Zeller:

Referring to the letter of Judge Metzner dated August 21, 1962, there is enclosed a copy of the written authority from Mr. Hughes to Mr. Davis which is being filed with the Court today. I understand from your letter of August 2, 1962 to Judge Metzner that you agree to treat the authorization as a confidential document under the terms of the Special Master's order of March 21, 1962 relating to confidential documents.

Your letter dated August 22, 1962 points out that you do not believe that your client's interest would be adequately protected by a service on Mr. Davis because you do not know whether the authority of Mr. Davis is irrevocable.

May I suggest that the problem would be solved if you were to serve Mr. Davis promptly and before any question as to revocability could arise.

I assure you again that Mr. Davis will accept service of whatever subpoena you have obtained whenever you care [fol. 1506] to submit same to this office. If you prefer to have Mr. Davis personally available at that time, please so advise.

Very truly yours,

/s/ Lola S. Lea
Lola S. Lea

Encl.

cc: Hon. Charles M. Metzner
J. Lee Rankin, Esq.
All Counsel

[fol. 1507] EXHIBIT I TO AFFIDAVIT

August 24, 1962

Re: *TWA* v. *Hughes Tool Company, et al*

Dear Mrs. Lea:

This will acknowledge receipt of your letter of August 24, 1962 and the copy of what you say is the written authority from Mr. Hughes to Mr. Davis. We offered to treat this document as a confidential one under the terms of the Special Master's Order of March 21, 1962 relating to confidential documents, and will do so. Now that I have seen the document, however, I must say I am unable to see why anyone could possibly be interested in having treated it as a confidential document.

I am glad to have your assurance that Mr. Davis will accept service of the subpoena upon Mr. Hughes which we have obtained, and to have your suggestion that we serve Mr. Davis promptly in order to avoid any question of revocation. In view of the contents of the document trans-

mitted with your letter, however, I can see that many questions other than revocation might be raised.

We therefore continue to feel as we have in the past that our client's interest would be better protected by service of process upon Mr. Hughes personally than upon Mr. Davis as Mr. Hughes' agent to receive service. We will continue to await Toolco's answers on August 27th to our Interrogatory as to Mr. Hughes' whereabouts.

Very truly yours,

Robert G. Zeller

Lola S. Lea, Esq.
Chester C. Davis
120 Broadway
New York 5, N. Y.

cc: Honorable Charles M. Metzner
J. Lee Rankin, Special Master
ALL Counsel

[fol. 1508] EXHIBIT J TO AFFIDAVIT

(Letterhead of Chester C. Davis, New York 5, N. Y.)

August 27, 1962

Re: *TWA vs. Hughes Tool Company, et al.*

Robert G. Zeller, Esq.
Cahill, Gordon, Reindel & Ohl
80 Pine Street
New York 5, N. Y.

Dear Mr. Zeller:

Referring to your letter of August 24, 1962 and your telephone conversation of this afternoon with Mr. Davis, this is to confirm that Toolco understands that it has complied with the order of the Special Master, affirmed, except as modified, by the order of the Court dated July 12, 1962 as amended by order dated July 26, 1962. As you will recall,

said order required Toolco to answer certain interrogatories in the event that Mr. Hughes failed to furnish written authorization to accept service of a deposition subpoena.

The authority of Mr. Davis to accept service on behalf of Mr. Hughes having been confirmed in writing and filed with the Court and the Special Master, we do not understand what proper interest of your client remains in seeking answers to interrogatories as to the whereabouts of Mr. Hughes.

[fol. 1509] As previously indicated, Mr. Davis is available to you at your convenience.

Very truly yours,

/s/ Lola S. Lea
Lola S. Lea

cc: Hon. Charles M. Metzner

J. Lee Rankin, Esq.
Special Master

All Counsel

[fol. 1510] Exhibit K to Affidavit

(Letterhead of Cahill, Gordon, Reindel & Ohl,
New York 5, N. Y.)

August 28, 1962

Re: *TWA* v. *Hughes Tool Company, et al.*

Dear Mrs. Lea:

This is to acknowledge receipt of your letter of August 27th.

The order to which you refer was *not* a conditional order. The order directed Toolco to answer TWA's interrogatory as to Mr. Hughes' whereabouts on or before August 27, 1962.

As counsel for TWA, we were willing to agree, subject to Judge Metzner's approval, that it would not be necessary for Toolco to answer the interrogatory if Mr. Davis received written authorization from Mr. Hughes which, in our opinion, was sufficient to make the personal service of a subpoena upon Mr. Davis the legal equivalent of personal service upon Mr. Hughes. No such adequate authorization has ever been given to Mr. Davis, and we have never consented to any departure from the express and precise terms of the order entered on July 26, 1962, compliance with which was again directed in Judge Metzner's letter of August 21, 1962. Moreover, at no time has it been possible for you to be under any reasonable misapprehension that we considered the photocopy of a piece of paper finally transmitted with your letter of August 24, 1962 to be an adequate authorization.

[fol. 1511] It is plain that Toolco has deliberately defied the Court's order. We will serve upon you later today a motion for the granting of appropriate relief.

Very truly yours,

/s/ Robert G. Zeller
Robert G. Zeller

Lola S. Lea, Esq.
Chester C. Davis
120 Broadway
New York 5, New York

cc: Hon. Charles M. Metzner

J. Lee Rankin, Esq.,
Special Master

All Counsel

[fol. 1512] Affidavit of Service (omitted in printing).

[fol. 1514] [File endorsement omitted]

[fol. 1515]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, et al., Additional Defendants on Counterclaims.

MEMORANDUM REVIEWING THE HISTORY OF TWA'S APPLICATION FOR PERMISSION TO PROPOUND AN INTERROGATORY TO HUGHES TOOL COMPANY CONCERNING THE LOCATION OF HOWARD R. HUGHES—Filed August 30, 1962

This memorandum contains a chronological review of the proceedings in the above-entitled action relating to the application of Trans World Airlines, Inc. (herein TWA) to propound an interrogatory to the Hughes Tool Company (herein Toolco) concerning the location of Howard R. Hughes (herein Hughes) and is filed in support of TWA's [fol. 1516] motion for relief pursuant to Rule 37(d) of the Federal Rules of Civil Procedure.

The following is a list of dates along with a description of the activity on that date:

Date	*Description of Activity*
March 22, 1962	Direction of the Special Master permitting the submission of briefs on April 2, 1962 concerning the authority of the

	Court to obtain from Toolco or anyone else information as to the location of Hughes in order to permit service of process upon him. (Tr. 3626-3627)
April 2, 1962	Memorandum filed on behalf of TWA in response to the request of the Special Master noted above.
April 3, 1962	Date of letter of Toolco counsel to Special Master suggesting that no proper application had been made for the serving of an interrogatory by TWA.
April 4, 1962	Date of letter of TWA counsel to Special Master citing his request as noted above that such memoranda be submitted, and requesting that, if the prior proceedings were not sufficient, the letter should be considered as an application and the giving of due notice.
April 17, 1962	Date of hearing and decision of Special Master granting TWA the right to propound an interrogatory to Toolco concerning the location of Hughes. (Tr. 4401)
April 27, 1962	Last day on which Toolco had right to appeal from the Special Master's decision granting TWA the right to propound the interrogatory.

[fol. 1517]

April 27, 1962	Date of letter of Toolco counsel to the Special Master stating that Toolco was "not in a position at this time to seek review" of the Special Master's decision to serve the limited interrogatory and stating that it was Toolco's understanding that it would have a right to object to the form and substance of any interrogatory after it had been served.

April 30, 1962	Date of letter of the Special Master to Toolco counsel in answer to Toolco's letter of April 27, 1962, stating that TWA was authorized to serve an interrogatory forthwith and allowing Toolco two days after the service of such interrogatory within which to file any objections.
May 2, 1962	TWA interrogatory served on Toolco, requiring an answer by May 17, 1962.
May 11, 1962	Date of notice of Toolco's motion and objections before the Special Master to the TWA interrogatory, objecting both to the form of the interrogatory and also to TWA being allowed to serve such interrogatory at all.
May 17, 1962	Date of memorandum of TWA in opposition to Toolco's objections.
May 28, 1962	Date of memorandum of Toolco in support of its objections.
June 4, 1962	Hearing and second order of the Special Master, directing that the interrogatory should be answered on June 20, 1962. (Tr. 4472-4473)
June 7, 1962	Notice of Motion of Toolco for review and reversal of Special Master's order overruling Toolco's objections to the interrogatory. This "Notice" did not specify a day certain for the return date, and Toolco appears to have made no attempt to arrange for such date.
[fol. 1518]	
June 11, 1962	Date of letter of Toolco counsel to the Special Master attempting reargument of the Special Master's ruling granting TWA the right to propound the interrogatory.

June 14, 1962	Date of letter of Special Master answering Toolco counsel's letter of June 11, 1962, rejecting the attempt to reargue the Special Master's order, and distinguishing the authorities cited in the Toolco letter.
June 22, 1962	Date of letter from counsel for TWA to Judge Metzner requesting that Toolco's motion for review be denied without further hearing or alternatively requesting an early hearing.
July 10, 1962	Date of memorandum of Toolco in support of its motion for review and reversal of the Special Master's order overruling its objections to the interrogatory.
July 12, 1962	Date of TWA memorandum in opposition to the Toolco motion regarding the interrogatory.
	Date of hearing before Judge Metzner and pre-trial order granting TWA the right to propound an interrogatory to Toolco concerning the location of Hughes.
July 13, 1962	Date of letter from counsel for TWA to counsel for Toolco specifying July 27, 1962 as date by which responses to interrogatory were to be made, computed according to pre-trial order of July 12, 1962.
July 18, 1962	Date of notice of motion and memorandum by Toolco for an order by Judge Metzner clarifying or modifying the pre-trial order dated July 12, 1962 regarding the interrogatory. This "notice" did not specify a day certain for the return date, and Toolco appears to have made no attempt to arrange for such a date.

[fol. 1519]

July 20, 1962 — Date of memorandum of TWA regarding the attempt of Toolco to avoid answering the interrogatory on the location of Hughes.

July 23, 1962 — The following statement was made on the record by Toolco's counsel regarding the efforts which he had made to comply with the outstanding orders of the Court concerning answering the TWA interrogatory:

> "In other words, I have taken no action. I am not in a position to take any action in transmitting these interrogatories to the Tool Company for an appropriate time until I am in a position to say this is what you are supposed to answer." (Tr. 5828)

Oral application by Toolco counsel before the Special Master for an order extending its time to answer the interrogatory beyond July 27, 1962. (Tr. 5828 *et seq.*)

Date of decision of Judge Metzner denying the Toolco motion to modify or clarify the interrogatory.

July 24, 1962 — Argument on the part of Toolco counsel before the Special Master in support of its oral application for an extension of time to answer the interrogatory and decision of Special Master denying the application on the basis that the Special Master has no power to modify the Court's orders and, if he did have power, he would refuse the extension in the exercise of his discretion. (Tr. 6128 *et seq.*)

July 26, 1962 — Application by Toolco for an order enlarging the time within which it could answer the interrogatories to September 25, 1962.

Order of Court extending Toolco's time to answer interogatories to August 27, 1962.

[fol. 1520]

July 27, 1962 — Statement by counsel for Toolco that he had received authorization to accept service of subpoena on behalf of Howard R. Hughes (Tr. 6457 *et seq.*)

July 31, 1962 — TWA offered Toolco proposed stipulation providing for personal service upon Chester C. Davis of subpoena directed to Howard R. Hughes in lieu of receiving answers to interrogatories. This stipulation was rejected by Toolco, Toolco's counsel stating that he wanted instead to leave the matter as it had been left by Judge Metzner's order. (Tr. 6714; Exhibit L annexed hereto).

TWA stated its intention to proceed therefore in accordance with the Court's schedule (Tr. 6718-6719; Exhibit M annexed hereto), and the Special Master determined that there would be no modification by him of the Court's order (Tr. 6723; Exhibit N annexed hereto).

August 1, 1962 — Letter from Mr. Davis to Mr. Sonnett stating that Mr. Davis was authorized to accept service of a subpoena on behalf of Howard R. Hughes.

Letter from counsel for Toolco to Judge Metzner enclosing a photocopy of purported written authorization to accept service on behalf of Howard R. Hughes.

August 2, 1962 — Letter from counsel for TWA to Judge Metzner stating that TWA had not received a copy of the purported authorization.

August 20, 1962 — Letter from counsel for TWA to Judge Metzner advising the Court that TWA had been unsuccessful in its attempts to serve a subpoena on Howard R. Hughes on August 17, 1962 and advising the Court that such attempts would be renewed after receipt of answers to the interrogatories.

[fol. 1521]

August 21, 1962 — Court advised Toolco by letter that it was returning "what you say is a written authorization from Mr. Hughes" and that it expected compliance with its order of July 26, 1962.

Letter from counsel for Toolco again stating that Mr. Davis was authorized to accept service of a subpoena on behalf of Mr. Hughes.

August 22, 1962 — Letter from counsel for TWA to counsel for Toolco stating belief that TWA's interest would not adequately be protected by service upon Mr. Davis and advising that TWA awaited service of answers to its interrogatories.

August 24, 1962 — Letter from counsel for Toolco to counsel for TWA containing photocopy of purported authorization and requesting it be kept confidential.

Letter from counsel for TWA to counsel for Toolco stating that TWA intended to await Toolco's answers to interrogatories after considering purported authorization.

August 27, 1962 — Counsel for Toolco, Chester C. Davis, told counsel for TWA that he had no intention of answering the interrogatories.

Date of letter from Mr. Davis' associate counsel, Mrs. Lola Lea, confirming Toolco's intention not to answer interrogatories.

Respectfully submitted,

Cahill, Gordon, Reindel & Ohl, Attorneys for Plaintiff, Trans World Airlines, Inc., Office and P. O. Address: 80 Pine Street, New York 5, New York.

Of Counsel: John F. Sonnett, Dudley B. Tenney, Robert G. Zeller.

August 30, 1962.

[fol. 1522]

EXHIBIT L TO MEMORANDUM

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS BEFORE SPECIAL MASTER

MR. DAVIS: . . .

However that may be—statements on the record were made, or in briefs, rather—I simply announced something on the record last Friday which I thought was a matter of information which was of some interest to the Special Master and counsel, and merely because I saw fit to inform counsel last Friday of an event is no basis whatever, so far as I am concerned, for being subjected to cross-examination or to motions or stipulations which are not discussed with me or listening to Mr. Sonnett on the record or off the record state his views as to what the rules provide or don't provide.

There is no problem about this. They served interrogatories. We have had a decision of Judge Metzner. Let's leave the matter rest exactly where it is . . . (Tr. 6714)

[fol. 1523]

EXHIBIT M TO MEMORANDUM

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS BEFORE SPECIAL MASTER

MR. SONNETT: . . .

I have previously, in an effort to try to be as accommodating as possible, suggested that if Mr. Davis would like to have Nadine Henley or Mr. Gay or somebody serve Mr. Hughes in the privacy of wherever he is, and give us an affidavit of service, we could avoid whatever public embarrassment there may be, whatever the problem may be about trying to have the U. S. Marshal serve him.

But I want to make it plain that having made that offer, which was rejected, having proposed a stipulation and order which is designed to make it possible to implement Mr. Davis' statement, for his protection, our protection, and the Court's protection, that there is adequate authority.

I don't quite see why Mr. Davis is so distressed.

MR. DAVIS: I am not distressed, Mr. Sonnett.

MR. SONNETT: If we can't do it in a lawyer-like way, I guess we just have to go ahead with the program that Judge Metzner has arranged.

MR. DAVIS: I am terrified.

MR. SONNETT: I note, Mr. Davis, you are very flip about it, how terrified you are.

[fol. 1524] But you and Mr. Hughes and many others have to learn that the processes of the Courts of the United States are not to be treated lightly, and there is no question about it.

We shall continue with every possible effort to make Mr. Hughes subject to the process of this Court. You can either cooperate and do it in a lawyer-like and private manner, or you can thrust upon us the necessity of doing it otherwise. I don't see what else I can do. (Tr. 6718-6719)

[fol. 1525]

EXHIBIT N TO MEMORANDUM

EXCERPT FROM TRANSCRIPT OF PROCEEDINGS BEFORE SPECIAL MASTER

THE SPECIAL MASTER: I might further say, in light of the situation as it has developed, there is not and will not be by me any modification of the order of Judge Metzner about the interrogatories to be answered on August 27th. (Tr. 6723)

[fol. 1526] Affidavit of Service (omitted in printing).

[fol. 1756]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 61-2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES and HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants.

AFFIDAVIT—Dated September 5, 1962

ROBERT G. ZELLER being duly sworn, deposes and says:

1. I am a member of the firm of Cahill, Gordon, Reindel & Ohl, counsel for Trans World Airlines, Inc. ("TWA") in the above-entitled action.

2. I make this affidavit on personal knowledge in support of TWA's motion to strike the pleadings of Hughes Tool Company and enter a judgment by default against it.

3. The purpose of this affidavit is to inform the Court as to the source of the sample signatures and the questioned signature which are referred to in the affidavit of Charles A. Appel, Jr.

4. The signature "Howard R. Hughes" which appears in the Appel affidavit as Exhibit A1 is a photocopy of the signature on a note in the amount of $11,000,000 payable to the order of The Bank of America National Trust and Savings Association dated February 27, 1961.

5. The signature "Howard R. Hughes" which appears in the Appel affidavit as Exhibit A2 is a photocopy of a signature on a General Pledge Agreement in favor of The [fol. 1757] Bank of America National Trust and Savings Association also dated February 27, 1961. The Bank of America has stated that this pledge agreement covers the pledge by Mr. Hughes of 25,000 shares of Common Capital Stock, 25,000 shares of Preferred Capital Stock and 25,000 shares of Special Capital Stock of Hughes Tool Company ("Toolco") to secure the $11,000,000 note. Copies of said note and pledge agreement, and the above information as to the stock pledged, were furnished by The Bank of America to Jacob Kreshtool, Esq., Sequestrator appointed by the Court of Chancery of the State of Delaware in and for New Castle County, in Civil Action No. 1607, entitled "Trans World Airlines, Inc. vs. Howard R. Hughes, et al; and copies of the letters containing said information and copies of said note and pledge agreement were filed by the Sequestrator with the Court in said action.

6. The signature "Howard R. Hughes" which appears in the Appel affidavit as Exhibit A3 is a photocopy of the signature appearing on a commercial pilot's license issued to Howard R. Hughes, a copy of which has been certified as true and correct by the appropriate official of the Federal Aviation Agency.

7. The signature "Howard R. Hughes" which appears in the Appel affidavit as Exhibit B, which is the questioned signature, is the signature appearing on the photocopy of the purported authorization forwarded to me by counsel for Toolco by letter dated August 24, 1962.

8. In order to preserve the confidentiality which counsel for Toolco wished to have attached to this document, I have made certain that at no time was any part of this document other than the signature shown to Mr. Appel or to the photocopy machine operator. At all times since the

[fol. 1758] delivery of this document it has either been under lock and key or in the possession of Marshall Cox, an associate of this firm cleared under the Special Master's order relating to confidential documents, or me for the purpose of being shown to Mr. Sonnett, Mr. Appel and the photocopy machine operator.

Robert G. Zeller

Sworn to before me this 5th day of September, 1962.

Katherine H. W. Swift, Notary Public, State of New York, No. 31 9268000, Qualified in New York County, Commission Expires March 30, 1964.

(Seal)

[fol. 1759] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, et al., Additional Defendants on Counterclaims.

AFFIDAVIT—Dated September 14, 1962

State of New York,
County of New York, ss.:

John F. Sonnett, being duly sworn, deposes and says:

1. I am a member of the firm of Cahill, Gordon, Reindel & Ohl, counsel for Trans World Airlines, Inc. ("TWA") and I am familiar with the proceedings had in this matter.

2. In accordance with the Court's directions on September 6, 1962, this affidavit is submitted in reply to those portions of the affidavit of Chester C. Davis sworn to September 13, 1962 purporting to discuss the charge of forgery and fraud on this Court by reason of the wilful submission of a forged "authorization" allegedly supplied to Mr. Davis. In this connection, reference is made to the Court's directions on September 6, 1962 as follows:

[fol. 1760] "The Court: I will deal with the allegation of forgery separate and apart from the problem of the authorization, its legal effect and whether service was actually made on Mr. Hughes today.

"So, Mr. Appel, if necessary, will be called at some time in the future after I have received the answering affidavits of the defendant Hughes Tool Company to the charges contained in your reply affidavit which they were just notified of this morning. At that time we can take care of that problem."

(Transcript, pp. 11-12)

"The Court: We have two problems.

"Is Mr. Hughes going to appear on September 24th? By doing that, I suppose he would validate whatever affidavit Mr. Davis gave to the United States Marshal today to justify acceptance of service of the subpoena on his part.

"The other problem is the document that has been filed in this court which you claim is a forgery.

"So we will have to let both of them stand in abeyance. The first one until September 24th and the second one to the filing by the attorney for the Hughes Tool Company on a week from today an answer to the charges contained in your reply affidavit that you served on defense counsel ten or fifteen minutes ago.

"If you want additional time after receipt of that answer to file a reply, you may have it.

"Mr. Sonnett: I would like to have three days after the receipt of the affidavit within which to file any further affidavits or to seek leave of the Court to examine under oath those who participated in what I regard

as a deliberate attempt to commit a fraud on this Court.

"The Court: All right."

(Transcript, pp. 14-15)

"Mr. Sonnett: I trust the affidavits to be submitted on behalf of the Hughes Tool Company will be affidavits by those people who participated in the preparation of the document, not hearsay by counsel, we have had too much of that.

"The Court: We will judge the affidavits when they are submitted."

(Transcript, p. 18)

[fol. 1761] 3. In accordance with the Court's suggestion, TWA has moved before the Special Master for an order directing that the examination of Howard R. Hughes commence on September 24th and continue until completed and that all depositions to be taken by Hughes Tool Company be suspended during that time. That motion is to be argued before Mr. Rankin on Saturday, September 15th at 10:00 A.M. The Davis affidavit above referred to has also been submitted by Hughes Tool Company to Mr. Rankin in connection with that motion. In that connection, I am submitting to the Special Master an affidavit, copy of which is hereto annexed as Exhibit A.

4. By a series of misstatements of the record, half truths, and evasions, the Hughes Tool Company contends in the Davis affidavit that the matter of forgery and fraud on the Court is insignificant since Mr. Hughes has ratified the alleged authorization, and in any event, that Mr. Hughes never should be deposed because TWA has no case.

5. The charge of forgery and fraud, supported by the expert opinion of a leading document examiner, has not been met. There is no admission or denial set forth in an affidavit signed and sworn to by Howard R. Hughes, which is certainly the easiest way to deal with the matter. Instead only hearsay statements allegedly made by Mr. Hughes to Mr. Davis and to a notary public are advanced. It is to be noted, however, that even in the hearsay statements it has not been said that Mr. Hughes claims that he

in fact wrote the signature which appears on the document we believe to have been forged.

6. Examination of the unusual and improvised "acknowledgment," which is Exhibit A to the Davis affidavit, indi- [fol. 1762] cates that by *ex parte* statements allegedly made by Mr. Hughes under oath on the 11th of September 1962, Mr. Hughes "acknowledged" that he had authorized Mr. Davis. However, nowhere in the so-called "acknowledgment" is it stated that the signature in question in fact had been written by Mr. Hughes. This omission and the deliberate failure to submit an affidavit containing Mr. Hughes' signature and sworn to before a notary public indicates that the tactic now employed is a resort to half truths in an effort to obscure the fact that a fraud was attempted to be committed on the Court.

7. The *ex parte* statements attributed to Mr. Hughes in the Davis affidavit appearing in paragraphs 8 through 15, and in particular in paragraph 14, do not meet the issue. Again there is an artful omission to supply an affidavit signed and sworn to by Mr. Hughes before a notary public containing a statement that he either did or did not personally write the signature on the document in question. An effort is made in paragraph 14 of the Davis affidavit to imply that Mr. Hughes made such a representation, but the ambiguity is so basic that it must be deliberate. Paragraph 14, therefore, deserves most careful analysis. If it is what TWA believes it to be, namely a further attempt to throw dust in the Court's eyes, it is even a more grievous contempt than those previously committed.

8. In paragraph 14 of the Davis affidavit it is stated that, after Mr. Hughes expressed "amazement" to Mr. Davis in a telephone conversation on September 10th that anyone would suggest that the document was a forgery, "he specifically said that he had directed the delivery to me of the [fol. 1763] writing in question *and that it was by him.*" These carefully chosen words, although ambiguous, are consistent with the words in the "affidavit of acknowledgment" and literally mean no more than a representation that Mr. Hughes had directed the delivery of the writing in question,

and now ratifies it, even though it is not asserted that he in fact had signed it.

9. In paragraph 14 of the Davis affidavit it is further said that in a telephone conversation on the morning of Monday, September 10th, Mr. Davis asked Mr. Hughes ". . . however, to acknowledge before a notary public the authenticity of the writing which I had received and informed him that I had requested California counsel to prepare an appropriate acknowledgment complying with the California statutory form. Mr. Hughes assured me that he would do so . . ." In fact, the "acknowledgment" is not a sworn statement that the signature was in fact the personal signature of Mr. Hughes. Further, the form of acknowledgment does not comply with "the California statutory form." Annexed hereto as Exhibit B is the California statutory form, which it will be noted requires an oath concerning the actual signature.

10. Upon the record now before this Court, it is submitted that the only conclusion that can be drawn is that a deliberate and wilful contempt of Court was committed in the first place by submitting a forged document not containing the actual signature of Howard R. Hughes and that a further wilful, deliberate and aggravated contempt has now been committed by a conscious resort to half truth and evasion in an effort to conceal the fact that a fraud had [fol. 1764] been attempted on the Court. Without regard to the entirely separate question whether Mr. Hughes has now ratified and is bound by his "acknowledgment" of September 11, 1962, the deliberate refusal of Hughes Tool Company to comply with prior Court orders by failing to answer interrogatories concerning Hughes' whereabouts, so that service could be made on him, the effort to frustrate the Court's orders by the submission of a forged document, and the current effort to conceal that fact, warrant the striking of the pleadings of Hughes Tool Company and the entry of a default judgment in favor of plaintiff for the relief sought in the complaint.

Wherefore, plaintiff respectfully requests the entry of an order striking the pleadings of the Hughes Tool Company

and granting the plaintiff a default judgment for the relief requested in the complaint, together with such other and further relief as the Court may deem appropriate.

John F. Sonnett

Sworn to before me this 14th day of September, 1962.

Katherine H. W. Swift, Notary Public, State of New York, No. 31-9268000, Qualified in New York County, Commission Expires March 30, 1964.

[fol. 1776]

EXHIBIT A TO AFFIDAVIT

Dictated over 'phone by Richard E. Davis in Los Angeles, Calif. 9/6/62 1:00 PM LAK

At 9:42 A.M. today I telephoned the office of the United States Marshal in Los Angeles. I first talked with a Miss Lucille Gordon, who knew immediately about the matter but then connected me with the man who actually made the service of the subpoena whose name is Earle L. Baugher. Mr. Baugher told me that a Mr. Irwin [believed to be a lawyer representing Hughes] telephoned from the east last evening about 5 o'clock and made arrangements for a service to be effected on Mr. Chester Davis at 7:15 A.M. this morning, which is before the usual hour that the Marshal's office opened. Mr. Baugher was present at that time at the Federal Building in Los Angeles and at that time made service on Mr. Davis of the subpoena issued August 17, 1962. Mr. Davis displayed to Mr. Baugher, but did not leave with him, a letter which was typewritten and consisted of about one paragraph, and purported to bear a handwritten signature of Howard Hughes. The letter was not, as Mr. Baugher remembers it, on any letterhead, but he was not wholly sure of that. In effect the letter stated that it authorized Mr. Chester Davis to accept service for Howard Hughes of the subpoena issued in the local Federal Court pursuant to the notice of August 16, 1962. An affidavit then was executed. (See attached)

[fol. 1777]

AFFIDAVIT

Docket No. N978

TRANS WORLD AIRLINES, INC.,

Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY,

Defendants.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CHESTER C. DAVIS, being duly sworn, deposes and says:

1. I am counsel of record for the Hughes Tool Company in the above entitled action now pending in the United States District Court for the Southern District of New York.

2. I have been authorized in writing by Howard R. Hughes to accept service on his behalf of a subpoena for his appearance as a witness on deposition in the above entitled action.

3. I am now authorized to accept service of the subpoena which was issued by the United States District Court for the Southern District of California pursuant to the notice of taking depositions dated August 16, 1962, a copy of which notice is annexed hereto.

/s/ CHESTER C. DAVIS

Notarized by

Woodrow N. Irwin

[fol. 1778] BER-C-2

EXHIBIT C TO AFFIDAVIT

MEMO NO. 673—September 11, 1961—11 A.M.

TO: HRH

FROM: Chester C. Davis

SUBJECT: Atlas-NEAL

Stretch and Austin will see the Chairman of the CAB about 4:30 P.M. this afternoon NYC time for a preliminary discussion. They anticipate that he will want to know whether a deal has in fact been traded or at least whether the parties are so close that a deal is certain if we get necessary indications from CAB. The banks are also inquiring as to whether the parties are close to a deal. Stretch is pressing me for an indication. I have indicated that his proposal is in the ballpark but I have not yet indicated the area or range which we would be willing to pay if everything else is satisfactory.

I do not need to commit myself now on an exact price. I have in mind also the possibility of trading price against time for payment which would give us an opportunity to realize full value for TWA's securities that might be used. I do not need to know, however, the area or range of price which would be satisfactory to you. There is no normal standard for placing a value on the interest of Atlas in NEAL. CAB may also inquire as to our attitude toward a possible merger of NEAL into TWA.

[fol. 1779] I should talk to you as soon as possible. In any event, I urgently need a message from you as to the price area in which I may commit. I should have this message this evening at the latest because I expect to be in Washington tomorrow morning.

[fol. 1780] BER C 3

OPERATING MEMORANDUM 724

SEPTEMBER 17

10:00 P.M.

TO: HRH

FROM: RAC

SUBJECT: B of A Conversations

Carver referred the Northeast matter to Gordon who, after a conference with others in the bank, announced the following position for the bank with respect to your proposed transactions:

a. The bank does not want to dictate to HRH what business decisions he should make.

b. While therefore they cannot "sanction" the transaction, they will make certain comments.

c. They feel that unless H receives indications from the CAB that he can rely on, he will be a "damn fool" to go through with the deal.

d. (Blocked out)

[Handwritten notation—Relevance TR 228]

e. HRH should not make a deal which impairs his ability to solve the Convair problem, although Gordon recognizes that it is possible that by the end of the year the HTC may become a creditor rather than a debtor.

f. HRH should not make a deal for Northeast that would impair his chances of making a settlement with TWA; that is, he should not commit subordinated debentures of TWA in amounts to prevent their use as a part of the TWA settlement.

[fol. 1781]

g. This acquiescence by the B of A in the Northeast transaction should not be construed as either a release

of cash collateral or a commitment for additional loans but should not be considered as a turn-down.

In my opinion HRH does not need to go back to B of A to make this deal provided that he is prepared to meet the B of A's specified conditions, (Blocked out)

[fol. 1782] BER-C-4

Copy

October 24, 1961

MEMORANDUM TO: HRH

FROM: CCD and RAC

RE: NORTHEAST

1. Stretch advises that the Chairman of the CAB will call some time tomorrow to arrange for an immediate meeting with us as representatives of Toolco for the purpose of discussing the procedures which we should consider following in light of our intentions and in view of the rapidly worsening situation at Northeast. Stretch says that the Chairman will also indicate to us that the Board is not prejudiced against the Tool Company. Stretch also says that he will be at the end of his rope by the end of the week.

2. It is increasingly clear that Northeast can be effectively helped only if Toolco is prepared to assure the overdue trade accounts that they will be paid. Shell has already insisted upon such an assurance to cover future deliveries. Vickers understandably is unwilling to give up any collateral position except as part of a program indicating that Northeast can be kept out of bankruptcy—in other words that there is a program for taking care of the trade creditors.

3. From our point of view, the giving of so-called limited assistance is likely to become unrealistic. This amount will keep increasing, particularly if an overall program reassuring the trade creditors is not developed and publicly

[fol. 1783] presented. It seems to us, therefore, that in order to keep the situation under control it is necessary to consider making a deal with Atlas giving us the right to acquir their position and which would form the basis for an application to CAB for their approval as to our acquisition of control. Pending CAB approval, we probably could limit the amount of financial assistance and reasonably expect the trade creditors, particularly the more important ones, to await CAB action. The application filed with CAB, however, would have to contain in effect a commitment on the part of the Tool Company assuring the payment of trade creditors upon CAB approval of our acquisition of control.

4. It is important that we have an opportunity to discuss this Northeast situation with you before we are invited by the Chairman to see him.

-end-

[fol. 1784] BER-C-5

September 20, 1961

2:30 A M

OPERATING MEMORANDUM NO. 738

TO: RAYMOND COOK

FROM: HRH

SUBJECT: NORTHEAST NEGOTIATIONS

Tell Cook that this thing is beginning to look completely okay to me; that there are a few items in both the memorandum and the application which I want to discuss with him before it is filed. That I will call him tomorrow without fail and discuss these matters or send him a message setting them forth. I will try to do this in time for the corrections to be made and the document to be filed tomorrow but I think that is expecting too much. I think a more realistic schedule would be the filing with the CAB on Thursday. That, however, tomorrow I will review with him fully all

of these items to which I refer. I don't think these are going to give us any trouble because they are simply items which I feel must be corrected from our standpoint but nothing which I believe will cause any displeasure with Atlas or the Board.

(Blocked out)

[Handwritten Notation—Relevance Tr 147]

In other words, go ahead with the program that he has outlined to me but with the limitation that no documents will be executed or promised to be executed until I give him further approval. This is not to be construed as meaning I wont grant approval perhaps even tomorrow, but tonight I want it understood that I have not approved any documents to be executed or promised to be executed, and

[Handwritten Notation—Relevance Tr 147]

[fol. 1785] BER C6

ABC—

MEMO 983 November 16 QIYQ 1961 10:00 AM

TO: HRH

FROM: ~~BILL~~ ~~GAY~~ R. Cook

RE: NORTHEAST AND LOCKHEED MEETINGS

1. Pursuant to the papers filed by Northeast with the CAB yesterday (copies of which should by now have been delivered to you) the Board will probably call a meeting either on tomorrow Friday or Monday, and by three P M today we should know which.

2. If the hearing is called for tomorrow Chester and I both feel that I should attend with him and I will plan to do so. If it is set for Monday I will still plan to come to Los Angeles for the Lockheed meeting tomorrow.

3. If the Lockheed meeting must again be delayed on this account I will arrange for Bill Gay to give Lockheed the nexessary explanations.

[fol. 1786] BER-C-7

Memo #1015—December 13, 1961—10:30 pm

To: HRH

From: Raymond Cook

Subject: Northeast

Referring to your memorandum of December 12 (yesterday morning), we believe that it is essential that we immediately tie up Northeast with an option from Atlas along the lines of our last message so that we may control the situation. This will not prevent you from making a different and better deal along the line of a firm commitment to buy out Atlas for cash as you are now contemplating. If we do not act by tomorrow (Thursday) and tie up the situation we are afraid we will loose our bargaining position with Atlas and loose face with the CAB and publicly.

[fol. 1787] BER-C-8

AABBCC—

October 3, 1961

5:45 AM

OPERATING MEMORANDUM 815

TO: RAYMOND COOK & CHESTER DAVIS

FROM: HRH

SUBJECT: NORTHEAST DEAL AND STRETCH

Please ask Mr. Cook and Mr. Davis to use every effort to keep the Northeast deal alive and please promise Mr. Stretch we will spend the entire evening trying to arrive at a mutually satisfactory deal.

[fol. 1788] BER-C-9

AABB—

December 14, 1961

8:00 AM

OPERATING MEMORANDUM 1016

TO: RAYMOND COOK

FROM: HRH

SUBJECT: NE-ATLAS

Raymond:

I am sure you believe sincerely in the fairness of what you propose, but when you say we can take an option at one price and then go ahead and negotiate and possibly close a firm deal at a much lower basis without the acquisition of the option having hurts us, I just do not believe that you yourself believe this.

As you know, this entire affair is being played out in five scenes and three acts in front of the CAB.

Now if we take an option at the figure you are discussing and then try to negotiate at a lower figure, the CAB will say we led Atlas down the garden path and encouragd them (by taking the option) to think we were seriously interested at the higher figure.

Please make the following firm offers for immediate acceptance:

$3,500,000 cash for Atlas' interest in NE—no strings no conditions, no option—naturally this would assure Atlas that we have made a firm decision to save NE from bankruptcy and therefore the major asset to be derived out of the deal by Atlas would be the virtual assurance that NE will be put back into healthy financial condition and converted into a profitable enterprise for the benefit of all the NE stockholders.

[fol. 1789] I think the absolute all-out horror-filled tragedy of Atlas permitting NE to go bankrupt to the financial

destruction of the stockholders is something so serious to Atlas that it would destroy public confidence in Atlas as a sound investment trust and make it impossible for all practical purposes for Atlas to continue in business.

I would expect an immediate liquidation of the company.

So this deal, in my judgement, should be viewed, not so much on how little or how much it brings in, in the form of purchase price now, but in terms of how much a skillfully managed Atlas Corporation can make for its stockholders through the coming years as opposed to how little the stockholders will realize out of an immediate forced liquidation on terms far from ideal.

I can argue the merit of this proposal, both practically and morally, going back to the fact that Odlum moved into my remnant RKO Company which consisted of nothing but a nice fat bank account of $24,000,000 plus and while hiding and concealing the fact from me, secretly acquired over 1,000,000 shares and took control of the company.

He then guided events into a merger between RKO and Atlas so my Atlas stock cost me $6,000,000 and any depreciation since then was solely due to the management of Atlas which I never interfered with in any slightest way at Mr. Odlum's request.

(The above is with respect to my alternate offer which is immediate firm (no option) exchange of my stock plus $1,000,000 cash for Atlas holdings in NE.)

[fol. 1790] So, according to my calculations, this offer would mean the Atlas holdings in NE, a bankrupt company by everyone's admission, would cost me:

Atlas stock	$ 6,000,000
Cash	1,000,000
HTCO advances to NE	10,200,000 plus
A.....	
Total	$17,200,000 plus

and this is only the beginning.

Heaven knows how much we will have to put into NE to save it, but a conservative guess would be $20,000,000. Our money, not bank loans which would be on top of this.

And all of this ignores completely the very large amount of money it cost us in our G.D. transactions to arrange and make available those six 880's which everyone now complains about as being too late, but they didn't think they were worthless when we gave them to NE and when NE could not get a single jet from anybody else for love or money here or abroad. Not a jet to be had from anybody, and NE was so desperate that when Odlum first came to me he was ready to settle for one airplane diverted to NE from our deliveries in January or February. So we gave him 6 and on the best lease anybody ever got—so good Naish got fired for it—and now they are complaining that the planes were late.

Anyway our costs in connection with that deal—which were very, very heavy—are ignored in the computation I have submitted above.

[fol. 1791] If anyone wants to argue that my stock in Atlas is not worth $6,000,000 today, there is one pretty good answer to that. Atlas management had full control of my $6,000,000 plus and if it is not worth $6,000,000 today, the responsibility lies only one place—Atlas—and it is from this same Atlas that we are contemplating buying NE, so I think due adjustment is owing to us.

The same answer applies if anyone wants to argue that our $10,200,000 investment in NE is not worth that amount today.

I agree it is not worth that amount—it is not worth anything and neither is the Atlas indebtedness in NE which we are getting ready to buy.

Also, here again, any depreciation in the $10,200,000 is Atlas' doing—we advanced the money at Atlas' urgent plea and again at Atlas' request we have kept hands off 100 percent and Atlas has managed NE without any interference from us, so any loss in the $10,200,000 is Atlas' responsibility—and it is with this same Atlas that we are

dealing and we are entitled to proper adjustment and credit.

We want Stretch as a part of this deal.

Just one thing:
The basis for the two proposals:

$3,500,000 is a 50 percent markdown for cash—all cash now—no options—no notes—no TWA debentures—no Atlas stock.

The other proposal is based upon the following:

$7,000,000 is taken from the figures comprising the variable [fol. 1792] option which starts at $7,500,000 in April 1962 and slides up to $9,500,000 by April 1963. If you extrapolate this to the advanced date of December 1964, you come up with a figure of about $7,000,000.

If my stock is valued at my cost of $6,000,000 plus and you add the $1,000,000 cash which I am offering you come up with $7,000,000 plus.

I am sure they will argue that my Atlas stock is not worth $6,000,000. The answer to that is that it was not only worth $6,000,000 plus in a bank in cash and correction: sentence should read: The answer to that is that it was not only worth $6,000,000 it consisted of $6,000,000 plus in a bank in cash and no liabilities. If Atlas, under their sole uninterfered with arbitrary management—with no obstruction or interference from me—operating in accordance with their own judgement, lost a part of my $6,000,000 then I don't see why I should be penalized for it in this deal.

However, apart from all of the above, there is no reason why my price which I am tendering, consisting of my Atlas stock plus $1,000,000, there is no reason why this must be worth $7,000,000 because I assure the Atlas holdings in NE are not worth $7,000,000—not be a long way.

[fol. 1793]

EXHIBIT D TO AFFIDAVIT

HTC ROMAINE

478

FORRESTER, WM. A. JR.

Fri., 10/28/60

12:30 p.m. (Per Opr) Got him on the line.

INFO They talked.

2:00 p.m. Call him back and tell him that for his information that Charlie Thomas negotiated and developed the deal with Dillon Reed financing plan without my authority or encouragement from me; he forced it down my throat then at a Board meeting at which time he created a coalition of my directors and turned them against me and faced me with a mass resignation of all but one of the TWA directors. I have never liked this plan; I have never been in favor of this plan; I have fought it from the very beginning and I am still fighting it and I assure you that if it is employed it will be over my dead body and if you would like to come up with any suggestions of an alternative plan or any way whatsoever by which I can avoid being forced into the Dillon Reed program, I would be most grateful. It is very flattering for you to say that you don't think I have ever been forced to do anything and maybe there was a time when this might have been a fairly accurate statement, but I assure you it is not true today and has not been true concerning this Dillon Reed program from its inception. I have fought it hammer and tong from the very first day that I ever heard of it.

2:30 p.m. Ans: Advised.

Mon., 10/31/60

11:50 a.m. Must speak to HRH.

INFO Omit; they talked.

Wed., 11/2/60

8:20 a.m. Tell HRH I would like to talk to him. I think I've got a plan on a second problem of his which he asked me to think about and I think it will have a bearing on the first problem.

Wed., 11/9/60

12:25 p.m. (Per Holliday) Anxious to talk; at Mr. Gordon's request, Forrester is meeting with Gordon in the morning, and must talk before then.

2:15 p.m. Tell him that I have been on this deal with Crown and the Convair people this entire day and I am not going to be able to talk to him until tomorrow.

200927

[fol. 1794]

HTC ROMAINE

500

ODLUM, FLOYD

Wed., 5/24/61

INFO HRH talked to him today.

5:20 p.m. Before we could contact Mr. Forrester he was on his way home to Connecticut. We will contact him tonight and expect to see him in my apartment here before the latter part of tomorrow forenoon.

6:00 p.m. Advised HRH. call omitted (per PW)

Fri., 5/26/61

2:00 p.m. Memo #148 (Per Mr. Cox) re TWA Financing

6:00 p.m. (Per Roy) Mr. Davis has indicated a number of decisions are required and I am aware the New York Stock Exchange wants certain assurances. I don't want any of this done until I consider it during the weekend.

I will be in contact with you and Davis during the weekend. I want to be sure no action will be taken, no statements made or decisions given to the New York Stock Exchange or any action taken either with the NY Stock Exchange or otherwise until I have had a chance to review these things.

I will not call you or Mr. Davis tonight so please don't wait up for my call. I will try to contact both of you tomorrow.

7:30 p.m. Ans: Advised Odlum.

Sat., 5/28/61

10:00 a.m. Memo #152—Atlas Corp. AAL's 990s. Voting Trust.

HRH advised.

Sun., 5/28/61

5:00 p.m. I want to talk to Mr. Hughes about instructions for his public relations counsel.

6:10 p.m. Advised HRH (per Roy)

201144

[fol. 1795]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Weds. 1/25/61

8:45 p.m. I am going to go on to sleep now and regarding the two matters he is handling in NYC—the meeting of the trustees and the Board of Direc-

tors meeting—try to make those meetings as late as they can possibly be made in the morning.

9:00 p.m. Advised.

Fri., 1/27/61

9:00 a.m. I want to be sure that you are standing by at a telephone. I want you throughout the day in your office. I want you to be able to clear your office and to talk privately at any time.

9:30 a.m. Advised.

Sun., 1/29/61

9:30 p.m. Vic Leslie says that Counsel for TWA has advised him that TWA cannot accept #9. That they must insist on 26 and 30. They cannot accept it because it would take 90 days to deliver #9, whereas 26 and 30 each would be delivered within about 4 weeks from the time that Convair is given the go ahead.

Mon., 1/30/61

2:30 p.m. Regarding the $5 million—we will be obligated to pay provided we do not make an amendment to the contract increasing the number of aircraft from Convair.

By letter to Hughes Tool to my attention, Convair has advised that "delivery positions for the 7 additional 600 aircraft cannot be held beyond Feb. 1, 1961 without a definitive purchase agreement."

They point out that "these delivery positions have been held since July, 1960, and have now reached a point in manufacture when very substantial orders must be placed for parts and material. It is imperative that an amendment to the present contract increasing the number from 6 to 13 aircraft be executed prior to Feb. 1, 1961. If this is not done we shall have no alternative

but to bill Hughes Tool for the cost pursuant to the letter agreement and to cancel these delivery positions."

201108

[fol. 1796]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Wed., 2/1/61

3:00 p.m. HTCo has on order 10 CJ 805 engines which TWA state are surplus to their needs even assuming that they might receive all 24 880's. Storage charges on these engines are being billed by GE but no arrangement for the payment of any storage charges has been made.

Bob Rummel advises that GE would cancel the order for these 10 engines without any cost to HTCo and give us the right to order additional engines if a need should arise in Sep. or Oct. at the price HTCo is now obligated to pay. This is notwithstanding that the price will increase immediately by approximately $14,000 per engine. A cancellation of these—$1-1/2 million obligation—would not only relieve us of the present obligation but would improve our balance sheet.

Cancel: per delivery

Tue., 2/7/61

3:30 p.m. The contract change order we sent out for the 7 600's is being returned by Convair today as not acceptable. Also, they are putting a registered letter in the mail to us today rescinding forthwith the contract for the 7 22-M's.

Thu., 2/9/61

3:00 p.m. A. 880-M Recisions: Written notice was received today from Convair rescinding the 880-M

contract. No mention was made of cancellation damages, although Naish has orally stated there would be none claimed. It is the opinion of Cook and Holliday that without express agreement from Convair, HTCo will remain contingently liable for whatever damages Convair may suffer from HTCo breach. Accordingly they recommend that HTCo promptly send Convair a written ~~agreement~~ acknowledgment of the recision notice and expressly incorporate Naish's oral waiver of damage claims.

B. Purchase Agreement for 7 Additional CV 600 Aircraft.

1. This morning Cook talked to Loomis, Gullendar and Naish in San Diego concerning primarily the necessity for a conclusion of the contract on 7 additional CV600 aircraft. (Naish regarded the 880-M problem as having already been solved.)

2. Gullendar and Naish want Cook and Holliday to come to San Diego Monday, Feb. 13, to negotiate to a conclusion a firm definitive agreement on the 7 additional aircraft.

3. The contract from which HTCo is expected to execute with respect to these additional aircraft, calls for a "down payment" of approximately $5,800,000 and progress payments aggregating another $4,300,000 commencing on June 1, 1961. Naish says that Convair may accept a promissory note for 60 days, but no longer.

4. Any solution which can likely be negotiated with Convair will require banking support and should be coordinated with the Bank of America.

5. Cook and Holliday recommend that prior to Monday, perhaps, Friday afternoon or Saturday morning, they be authorized to negotiate with the Bank of America on the following basis:

[fol. 1797]

HTC ROMAINE

498

HOLLIDAY, R.

Thu., 2/9/61 (Continued)

(a) The 880-M contract is irrevocably rescinded without penalty on Hughes Tool Co.

(b) Hughes Tool Co. will continue to offer TWA at least 2 of the remaining 880's until its new Board and President have had a reasonable opportunity to consider and accept.

(c) The $3,108,000 of down payment which so far remains applied to the 880 contract will be re-applied as a partial payment on the 600 contract.

(d) Convair will extend to Hughes Tool Co. credit for not less than 60 days for the deficiency of down payment on the 7 additional aircraft of approximately $2,700,000 and for the current deficiency of progress payment on the first 6 aircraft of approximately $2,600,000.

(e) The Bank of America would give general approval, though not a binding commitment for its financing of the final two 880's.

(f) Hughes Tool Co. agrees to obtain either a disposition of, or a mutually agreeable financing of the entire fleet of 600's prior to the date of the next progress payment due there on May 1, 1961.

(g) Negotiations with TWA and its investment bankers will be promptly commenced for a public offering of TWA subordinated debentures.

6. Naish says that no action can be expected out of TWA on either the additional 880's or on

the seven 880M's until some time in March, when at the earliest TWA will have its new Board and President.

7. In the absence of contrary instructions Cook and Holliday plan to arrive in Los Angeles Friday morning.

INFO Omit. They talked.

INFO Mon., 2/13/61

See message posted to Raymond Cook at 10:00 a.m. this date.

Thu., 2/16/61

6:20 p.m. (Per RC) Have received a telegram this morning addressed to Howard R. Hughes, 2200 Gulf Building, Houston, Texas as follows: "On January 6, 1961 we duly demanded that you pay the whole amount due and payable on the $10,664,659.39 note outstanding under your special loan agreement with us which has been past due since October 31 of last year. We have had no response from you and we hereby renew such demand and insist that the note be paid in full not later than February 24, 1961. If the note is not paid in full by that date we intend to avail ourselves of the remedies provided for in the loan agreement and to proceed promptly against you and against the stock of the Hughes Tool Company and other securities held by us as collateral for the loan. Signed, Irving Trust Company, Robert A. Kerr, Vice President." Need to talk to HRH re above. (above message should have been in red)

201110

[fol. 1798]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Mon., 2/20/61

3:30 p.m. Regarding GE engines—have been advised by GE that if HTCo wants to cancel the ten excess CJ805's it must do so by Monday 2/20.

4:00 p.m. Advised.

7:30 p.m. Cancel the engines provided we have the privilege to reinstate.

Regarding the Convair negotiations: I urge as follows: Regarding the claim that I would take AAL specs for the model 600's—this is true as to the original specs and at no time have I indicated any hesitation or uncertainty concerning the acceptance of the original AAL specs. At no time did I say that HTCO would take any subsequent change orders placed by AAL without approval of same first.

Convair's argument "why obtain TWA's opinion regarding 3% of the airplanes when TWA will not accept the other 97% is completely improper for the following reasons:

It is not up to Convair to decide whether TWA will accept the so-called 97% of the airplanes. This has never been a matter for discussion. However I obtain TWA's acceptance to this is my own problem; most likely HTCO will control TWA when that matter comes up.

In any event, it is not Convair's worry; the 97% is HTCO's problem.

Now, regarding the 3%; Convair is mistaken in saying it is HTCO's fault that this matter was not resolved because HTCO failed to give deci-

sions; this is an invalid and improper decision which Convair is seeking to take; for this reason we do not want these 3% of changes. We have a signed specification and that specification is the airplane we want. Failure by HTCO to accept changes ordered by AAL simply means by omission that HYCO has elected to take the airplanes without any changes and contractually unless you and R. Cook have permitted a default by failure to make payments, Convair is ~~not~~ obligated to give us the airplane in accordance with the original specifications.

If Convair says HTCO has failed to give a decision with respect to the change orders the answer is simply we failed to order the changes when offered and therefore I say again we elected not to take the changes and this is the way we want the airplane. Convair has no right whatsoever to bill HTCO for the 70 thousand dollars. HTCO demands the airplanes according to the original specifications and does not want any of the changes.

At no time have we agreed to take blanket changes by AAL or any of them for that matter and I do not want them. In other words, Convair wants an answer regarding the change orders and here it is: The answer is *no* regarding all change orders regarding the original specs. Quite obviously Convair wants HTCO to accept these change orders in the interest of saving Convair money which naturally results from making the HTCO plans identical with the AAL planes. If Convair went ahead and put some of these changes into the HTCO planes it was done not because Convair thought we wanted them and not because Convair was uncertain as to whether we wanted them but simply because

[fol. 1799]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Mon., 2/20/61 (continued)

Convair wanted to put them into the planes and charge us for them for the simple reason that this would save Convair a great deal of money over the other route, namely, to build the planes in accordance with the contract.

I want you to recite all of the above to Convair in detail and I want you to say in spite of my feelings that this is a very bad deal for HTCO and that it is costing HTCO approximately a million dollars for changes which I do not want in the airplane. Nonetheless, in the interest of getting the entire matter resolved HTCO is willing to do the following:

Give Convair promissory notes as negotiated by you; make no other changes whatsoever in any of the contracts except the one which Convair has requested concerning the 70 thousand dollars of change orders. HTCO will accept that provision exactly as it presently exists as a result of your negotiation with Convair. There are to be, however, absolutely no other changes at this time. This means the contracts will remain as presently drafted concerning delivery. Convair and HTCO to have the following oral understanding: (Not intended to be legally binding but hoped to be morally effective) A statement of intentions that Convair recognize and negotiate and that with respect to items which may be mutually agreed deleted Convair will be reasonable in the pricing. HTCO will arrange for contract administration concerning all aircraft on order in a manner in keeping with Convair's desires either by Bew or someone else (if it is

not to be Bew HTCO will make every effort to find someone acceptable to Convair and will submit his name to Convair for discussion prior to assigning him to the position).

Regarding deliveries—HTCO recognizes that present schedule is unrealistic and will sit down with Convair without delay to review proposed new scheduling taking in every way a reasonable viewpoint provided the relative slippage between AAL and TWA is as Convair represents, not disadvantageous to TWA in relation to AAL as compared to their relative position prior to slippage.

In regard to deliveries, you might point out HTCO has had long experience with Boeing, Lockheed and Martin in purchasing transport; aircraft; is well aware they rarely come out on time and that you cannot get blood out of a rock so that if the deliveries have slipped then they have slipped and there is nothing we can do about it. You might point out HTCO has never sought to cancel any one of its numerous contracts with airplane manufacturers for reasons of retarded delivery and from the best of my knowledge has never sought to cancel any airplane contract for any other reason. The best evidence of this is the fact that Convair has released us from all liability under the 22M's and we still do not want to cancel this contract and are fighting to avert its cancellation.

Regarding the informal understanding—regarding the four additional 880's; I say that HTCO desires that the contract for these airplanes remains undisturbed. HTCO will notify Convair promptly of the disposition of the airplanes. HTCO has offered the four airplanes to TWA. If TWA does not take them HTCO will notify Convair promptly of what is desired to be done with these airplanes. In any event, in accord-

ance with Convair's last proposal HTCO does not make any commitment at this time to Convair in any way affecting these airplanes either for cancellation or otherwise and they are not

201112

[fol. 1800] HTC ROMAINE

498

HOLLIDAY, RAYMOND

Mon. 2/20/61 (continued)

allocated to TWA: nor are any other unallocated airplanes to be allocated to TWA until TWA makes at least a satisfactory oral agreement with HTCO with respect to these four additional airplanes.

Regarding the 22M's HTCO is aware that Convair contends that Convair is no longer obligated contractually to HTCO with respect to these airplanes. HTCO does not consent to or acquiesce to this position by Convair but at the same time Convair does not change the documents to be signed at this time or desire anything toward reinstatement of the 22M contract.

However, HTCO will appreciate very much indeed Convair withholding for as many days as is humanly possible any action toward destruction of these aircraft—or commitment to anyone else concerning them as HTCO is making an immediate allout effort for TWA to accept these aircraft; taking all measures toward this objective and HTCO has confidence in this respect in spite of Convair's apparent receipt of information tending to indicate that TWA is not interested in these airplanes. In addition to this HTCO is approaching certain bankers immediately as to the possibility of obtaining financing for the purchase of these aircraft independent of any possible disposition to TWA. HTCO is determined to purchase these aircraft; does not

want them destroyed or disposed of to others under any circumstances. HTCO will make a most determined effort to satisfy Convair immediately of HTCO's determination and financial ability to accept and pay for the aircrafts promptly *fulfilling* its obligation in regard to these airplanes without delay.

In summary, you could point out to Convair that the settlement HTCO is proposing would give Convair everything that Convair wants in regard to revised specs and *an* additional $70 thousand dollars added to the price of each model 600 airplane and would put HTCO completely at the mercy of Convair in regard to any adjustment of this matter. I consider this concession completely and utterly unfair but I am proposing it as an indication that we want to give and take and we are therefore placing ourselves at Convair's mercy in respect to the adjustment of this matter if Convair should ever decide in Convair's own arbitrary judgment to condescend to make any judgment.

Also, it should be noted that with respect to the seven 22M's, which we so urgently want, again we would be completely at Convair's mercy in regard to any hope of obtaining these airplanes inasmuch as under the proposal I am making no new papers would be signed concerning these aircraft and therefore Convair's present written notice of cancellation would stand unchanged and in full effect.

Make full use of and emphasize most strongly with respect to the two points below: (a) the revised specs and $70 thousand of additional price; (b) cancellation of the seven 22M's to HTCO—we would be completely at the mercy of Convair in any possible discussion concerning a judgment or disposition of these matters.

Italicized words typewritten interlineation.

Then point out to what extent it may seem advisable that in return for HTCO placing itself completely at Convair's mercy in respect to the above points, it seems little enough that Convair trust HTCO to sit down immediately

201113

[fol. 1801]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Thu., 3/2/61

4:00 a.m. Please take all preparatory steps necessary to be in a position to tender to the Bank of America on Friday a mortgage on the real estate we discussed. I hope to persuade the bank to accept a general description of the property in general language which will not require the taking of an inventory. Please do not actually make presentation to the bank until I communicate further with you, but please make all necessary preparations in order that we will be in a position to make this tender by Friday afternoon at the latest, as this is the deadline imposed by the bank. Many thanks, Howard.

4:15 a.m. Ans: Advised.

Fri., 3/3/61

6:00 p.m. We met with B of A this morning and they are satisfied to take the property as collateral provided the right to egress and ingress can be worked out.

We agreed that it was not the intention of you to deny the right to egress or ingress and are now developing a method by which this can be done, to wit: A mortgage on the road way with an easement back to HTCo.

With this one change the bank is completely satisfied and the paper work is being completed to

provide for the mortgages which will probably be signed on Monday. In other words, unless some further question arises from B of A the matter with them is now settled until the time, or until April 20, when it will become necessary to renew the note on some long term basis.

The following TWX was sent to HTCo in Houston: "Model 880 aircraft manufacturing statements #26 and #20, were initially tendered to the HTCo on Aug. 12, and Oct. 18, 1960 respectively and upon your failure to accept delivery, were stored. Convair hereby notifies you that said aircraft #26 and #30 are being prepared for 43-tender to the HTCo for inspection and acceptance on March 8 and March 15, 1961 respectively, pursuant to an agreement between Mr. Hughes and Mr. Loomis on Feb. 15, 1961.

"You are requested to advise the undersigned immediately if the HTCo or TWA as assignee of HTCo will, after inspection, accept the aircraft on the date indicated. In connection with the foregoing, your attention is invited to the provisions of Article #2A5 of the purchase agreement between HTCo and Convair dated Sep. 10, 1956, signed, Convair by D. H. Diggs for C. L. Meador."

I received in my office in Houston a letter from Convair dated Feb. 27, 1961, asking for prompt designation of a representative to provide administration of the 600 contract pursuant to the negotiations conducted in firming up the seven follow-on 600's.

Have met with Bautzer and am going to meet again in just a short time.

HRH Advised.

201116

[fol. 1802]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Fri., 3/3/61 (continued)

5:15 p.m. OK on Bank of America. Please proceed to work it out accordingly. Regarding the ingress and egress, please be most careful on the paper work on this.

Regarding the two communications from Convair, do not do anything regarding these things until further instructions from me. I will get word back to you by Mon. morning what to do apropos these two messages delivered me from Convair. Please do not give them any response orally or otherwise. If they press you futher for an answer, tell them they will hear back from us on Mon.

11:30 p.m. Advised—call cancelled.

Sun., 3/5/61

12:00 a.m. Please call Cook and say that I want both of you to leave Houston Sunday evening at the very latest. You and Cook are to come out together. I will talk to you when you get to L.A.

Tue., 3/7/61

10:00 p.m. You are to come alone to Odlum's ranch tomorrow. Just you are to come out and follow all the instructions as given before concerning the meeting at the Odlum ranch tomorrow afternoon.

Wed., 3/8/61

3:45 a.m. Send a telegram or however it should be done to Convair by 7:00 a.m. from Houston; to be sent by Chuck Price in the usual way. The authoriza-

tion should apply to #26 only not #30 or any of the others. From a practical standpoint the result should be that #26 be delivered to TWA without any delay whatsoever. I want the designation to be carried out from a legal, practical, mechanical and documentation standpoint. The same identical way we have done the others, unless there was a defect in the documentation on the prior occasions which was disadvantageous to us, in which case, of course, I want any such defects not to be repeated on this occasion.

4:45 a.m. Ans: Advised.

3:45 a.m. Please tell Odlum when you first see him that I appreciate very much indeed the message he was kind enough to send me last night, and please tell him further that I have complied with and carried out his recommendation precisely and exactly in every detail. Also, please tell him that I appreciate very deeply his courtesy, concerning your meeting today and also the meeting he had with Greg Bautzer last night, both upon such short notice.

201117

[fol. 1803]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Sun., 3/26/61

5:15 p.m. I request that you leave for New York tonight on a very important matter.

5:20 p.m. Advised.

Wed., 3/29/61

7:00 p.m. I want you to remain in NYC because I may want you to have a meeting either tomorrow or Friday, but you can definitely get home the Easter weekend.

Thu., 4/6/61

9:20 p.m. Memo #49—Letter from TWA.

Sat., 4/8/61

1:30 p.m. Memo #51—TWA Sub. Debentures

HRH Advised.

Fri., 4/14/61

1:00 a.m. Do not sign anything unless you have approval from me or from Bautzer through me. On future signatures on any letters or documents, you may take Bautzer's suggestions.

Ans: Advised.

Sun., 4/16/61

12:30 p.m. I met with Plumb yesterday and until 2 p.m. EST today and have made arrangements to make available whatever more time he desires.

201120

[fol. 1804]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Mon., 4/18/61

1:15 p.m. Regarding copy of the letter of over-subscription of debentures, please notify the people at CPW&W that we do not consent. Until further communications you must consider that this is disapproved. However, we will consider the matter and communicate again with them. Meantime, the matter is not approved.

What is the latest date on which action can be taken on this matter? Is the failure to respond reason for them to believe that the matter was approved? I want your and/or Bautzer's opinion on this. Is failure to reply construed as consent?

The date on this letter was April 12; why wasn't I notified sooner?

2:45 p.m. Ans: I will advise them directly and also get answer to the questions you mention and let you know forthwith—possibly late this evening or first thing tomorrow morning.

Wed., 4/19/61

2:30 p.m. For practical purposes we have until April 26, the day before the board meeting and stockholders meeting on April 27, because this is a matter that should be approved by the Board of Directors. Technically and legally, it could probably be approved at some date after the Board meeting and could be approved by the Executive Committee any time within one week prior to the offering, which could carry it into sometime in May, but the answer should be given for all practical purposes by April 26. It is something the company would want to approve rather than the Executive Committee. The reason the letter was not brought to your attention before was that copies were sent to me both in Houston and NYC and it just happened that I wasn't in either place.

Thu., 4/20/61

10:00 a.m. Where do we stand on the four airplanes for TWA?

12:15 p.m. Ans: I had lunch with Leslie and he said that if we wanted to make them an offer we should do so because it would have to be appraised by the Board of Directors and it would have to be before the Board meeting because at that time they would probably want to commit for some Boeings.

I don't have any new information than what I gave to Bautzer, and I know he talked to you

since that time. The last thing we had was the letter Leslie sent to me and following that I had lunch with him. Leslie said they would like to have the planes but we will have to make them an offer. I did not give an offer because I felt we had a deal all along. He did reiterate, however, that they are not going to try to buy them at a distressed price.

201121

[fol. 1805]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Fri., 4/21/61

3:00 p.m. HRH advised.

Mon., 4/24/61

(HRH called Bautzer and Bautzer called Holliday, while he was talking to HRH, so Bautzer could ask questions of Holliday and then pass the answer to HRH.)

7:20 p.m. I met with Mickey West today and discussed with him his working with Tom Plumb.

Tue., 4/25/61

10:02 a.m. Memo #64—TWA Debenture Problems.

Wed., 4/26/61

9:00 p.m. Memo #68—Offer of Planes to TWA.

Omit calls—they talked.

Thu., 4/27/61

9:30 p.m. Memo #72—TWA Stockholders Meeting.

Fri., 4/28/61

4:15 a.m. Do not execute the document you are holding in Houston until you get my approval.

8:30 a.m. BG advised him.

201122

[fol. 1806]

HTC ROMAINE,

498

HOLLIDAY, RAYMOND

Sun., 4/30/61

8:15 p.m. It is OK for him to go to NY if his business is in connection with the four airplanes. It is also OK for him to execute the papers he has. Go ahead and do it before he goes to NY. If he is going to NY, execute the papers in Houston, put them in an envelope to Schwab and give them to Chuck Price. Instruct Price to hold it for further instructions.

8:30 p.m. Advised Holliday, who called Schwab.

Mon., 5/1/61

4:45 p.m. Before talking with the people at TWA about the four 880's I need to speak to you. TWA, from my conversation with Leslie while Leslie was in Kansas City, will require that a written offer be made quickly.

Tue., 5/2/61

11:40 a.m. Memo #73—Payment for 600's.

4:30 p.m. Memo #74—Re Letter from Olds.

Sun., 5/7/61

4:20 p.m. I have talked to Convair and while they are not unduly upset about the progress payments, they

are very anxious to proceed immediately with negotiations.

8:30 p.m. Advised.

Mon., 5/8/61

4:30 p.m. Memo #76—Progress Payments to Convair.

Tue., 5/9/61

3:30 p.m. Memo #78—TWA Debentures.

201123

[fol. 1807]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Tue., 5/9/61 (Continued)

9:00 p.m. I talked with Bautzer and he affirmed that Reed had told him that the over-subscription right to the extent that it was subscribed would go to reduce the commitment of the Tool Company.

Following my conversation with Bautzer, I called Francis Reed and he affirmed that to the extent the over-subscription right given to the minority was actually subscribed that the commitment of the Tool Company would be correspondingly reduced. Reed said that he felt that it was late but he would try, and felt confident that he could get the papers amended to provide for the over-subscription right. Reed also told me that it would be necessary for the Tool Company to give to TWA a letter assenting to an over-subscription right and will dictate a letter accomplishing this to my secretary tomorrow morning.

Omit—they talked.

Wed., 5/10/61

3:50 p.m. Memo #81—Purchase Agreement on 13—600's.

Memo #82—Proposed Telegram to TWA.

Thu., 5/11/61

9:00 p.m. Prior to leaving Houston, I talked several times with Bill Forrester and the work on the project seems to be going ahead in full course. I have an appointment with Forrester at 9 in the morning and at that time the plan and mechanics for accomplishing the project will be discussed and delineated.

Omit—they talked.

Fri., 5/12/61

4:30 p.m. Memo #85—Re TWA Financing.

Sat., 5/13/61

4:00 p.m. Memo #86—Re Brandi.

Memo #87—Re Brandi.

201124

[fol. 1808]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Sun., 5/14/61

7:15 a.m. Arrange a meeting with C. Davis for later in the day.

10:00 p.m. Memo #90—Offering of Debentures.

Memo #91—Proposed Resolution.

Wed., 5/17/61

7:00 a.m. Please follow carefully the recommendations of Mr. Odlum and Mr. Davis.

7:30 a.m. Ans: Advised.

8:30 a.m. The TWA Board of Directors declined the Merrill Lynch plan. They voted to proceed with their own registration statement and their own offering and Mr. Davis was permitted to come into the meeting and talk to the Board of Directors and explain the position of the Tool Company. However, the matter seemed to be completely cut and dried and after having taken the action, I retired from the meeting to advise Mr. Davis of the action taken.

Mr. Davis gave me a letter addressed to the TWA Board which pointed out the risk of liability on the part of TWA and the Board members individually, etc. I gave the letter to the Chairman with the request that he read it to the Board and it was read to the Board by Mr. Tillinghast.

Following the reading of the letter, Mr. Tillinghast designated Carl Rowe, counsel for TWA, to talk to Mr. Davis immediately and Mr. Breech designated Mr. Reed, counsel for the Trustees, to talk to Mr. Davis, and that is the meeting Mr. Davis is presently attending.

Omit all calls—they talked.

Sat., 5/20/61

6:30 p.m. Memo #114—Board of Directors Meeting, HTCo.

Memo #118—Meeting with Forrester.

Mon., 5/22/61

11:45 a.m. Telegrams sent to SEC, TWA and Davis. See Memo #126.

[fol. 1809]

HTC ROMAINE

HOLLIDAY, RAYMOND

Tue., 5/30/61

10:15 p.m. Please tell Mr. Davis to be sure that Mr. Odlum, or anybody, does not give to the NY Stock Exchange any decision in this matter until I communicate with Mr. Davis.

10:30 p.m. Advised.

Thu., 6/1/61

4:30 p.m. Advised Holliday of message to Davis.

Fri., 6/2/61

12:15 p.m. Omit all calls—they talked.

Mon., 6/5/61

5:35 a.m. I urgently and most strongly request that the proposed press release not be made and that we not make any other press statement until further discussion. I want to put forth for Mr. Davis', Mr. Holliday's and Mr. Odlum's consideration my reasons for feeling as I do. If afterwards they do not agree then I will not object further.

6:00 a.m. Advised.

Fri., 6/9/61

8:30 a.m. The minority subscription figure is $19,037,900. It is possible that this figure might change slightly as it has not yet been certified.

11:30 a.m. Advised.

Mon., 6/19/61

3:00 p.m. Memo #225—Letter from Tillinghast.

Memo #226—Telegram to Tillinghast.

[fol. 1810]

HTC ROMAINE

498

HOLLIDAY, RAYMOND

Mon., 7/31/61

1:30 a.m. HRH advised. Calls cancelled.

Fri., 8/4/61

4:30 p.m. Memo #406—B. of A. Views on Settlement Negotiations.

Sun., 8/13/61

9:00 p.m. I want to call you early in the morning, but don't wait for it—go ahead with your activities pending such time as I call you.

9:30 p.m. Advised.

Tue., 8/15/61

3:15 p.m. Memo #486—Convair 880's.

Tue., 8/22/61

7:00 p.m. Regarding Houston firm, I am not going to be able to get that to him to transmit until tomorrow morning, so just let anybody waiting up go on to bed.

7:45 p.m. Holliday advised.

Sat., 9/9/61

7:30 p.m. Have you heard from Mr. Loomis and if so, what is the report?

11:00 p.m. I haven't heard from him at all.

Fri., 9/15/61

10:30 a.m. Set up a conference call in 30 to 45 minutes between Bill Gay, Raymond Holliday and myself.

[fol. 1811] HTC ROMAINE

HOLLIDAY, RAYMOND 498

Mon., 10/2/61

7:00 p.m. Telegram from G. D.

Thu., 10/19/61

7:00 p.m. Memo #892, Re Northeast.

Fri., 10/20/61

7:30 a.m. Advised HRH of Memo #892. Call cancelled.

4:00 p.m. Memo #1028—Lockheed—Jetstar.

Tue., 12/19/61

4:00 a.m. Memo #1028, HRH advised per JH; cancel.

201129

[fol. 1812] #330 521

HTC ROMAINE

July 19, 1961
7:15 p.m.

To: HRH

From: Raymond Holliday

The first thing that came up at the board meeting today was the approval of the minutes. I explained that I had just received the minutes; that while they might have been mailed that I hadn't received them and consequently I would abstain from voting.

Next was the approval of the Executive Committee Meetings and I had glanced at these, and the minutes of June 29, that was the authorization for the filing of the law suit. I stated that I questioned the authority of the Executive Committee to authorize the filing of the law suit because as I remembered the resolution hiring the law firm that came out of the board of directors meeting that a report was to be made back to the board by the Cahill firm. It was explained to me that there was a report made to the board but that it was oral; that a report also was made to the Executive Com-

mittee on June 29 and at that time the Executive Committee authorized Tillinghast to file the law suit whenever he felt it was the necessary thing to do in his judgment. So I questioned the authority of the Executive Committee and wanted the record to show that. At that time Slack suggested that the board should at that time ratify the action of the Executive Committee. The vote was taken and I cast the only "no" vote.

Nothing else came up for some time except the approval of the 1961 financing for the Boeing purchase. When that came down for vote I pointed out that nothing had been said yet on the part of HTCo. making a settlement which would permit this and there was a considerable amount of discussion. Mr. McCone and Mr. Hood raised some questions about it which were going into the merits of it, as to whether or not it was something that could be afforded, whether they needed the planes, and some very searching questions.

[fol. 1813]

I pointed out that there were some discussions going on at that time in which the financing was an ingredient and if the board could not withhold the matter for a vote at a later time I would abstain from voting. McCone also abstained because he thought it was being acted upon too quickly.

Tillinghast made a report of his conversations with Bautzer and after he made his report I pointed out that Bautzer was authorized to make the representations he made. At that point Breech suggested that since I was also a defendant in the suit that possibly it might embarrass me and I might retire from the meeting for 15 minutes, which I did. There was no further discussion of this, and nothing also came up at the meeting that was of any particular significance. There was a lot of talk about why the company was losing money but nothing else came up for action or to be voted upon that was anything except routine.

I made a complete report of the meeting to Bautzer.

[fol. 1814]

HTC ROMAINE

519

OPERATING MEMORANDUM

Subject: TWA Subordinated Debentures, etc.

Date 5/11/61 - 5:00 AM

From: HH to R. Holliday

Please move ahead with all possible speed on the program to sell and pay to the HTC the proceeds thereof the entire $111 million plus of TWA's subordinated bonds. Please consider this authority to do everything necessary to proceed with this program without delay. The directives concerning the secrecy which I gave you before may be violated as required, but no more and no sooner than necessary. Bear in mind that any market is supply and demand, and if word of availability of this enormous quantity of bonds should suddenly become known up and down the street, it might raise hell with the price. Please work in close contact with Bill Forrester (or whatever other investment brokers you decide to use). But remember, this is a tricky program and one which will require the maximum skill and attention of the very best investment brokerage brains every single minute of every day as to every single detail.

This is a big assignment I am giving you, Raymond, and if you carry it out to my expectation, the rewards and results to you will be very substantial. I would like to have before me the plan of how this program is to be carried out, but you can dictate this in the evenings when it will not interfere with your work, and I do not want to delay or hold up any slightest detail of this program waiting for me to read these plans, and I do not want you to wait one minute for any further authority or comunication from me.

•••

Regarding the warrant or right to purchase TWA stock which will be attached to the debentures, as I stated in my last message, we would like to retain as many of these warrants as possible, but if the debentures simply cannot be sold without the warrants attached, even at a reduced price

(reduced by not too much more than the value of the warrant), then in that event, we will simply have to let the warrants go along with the debentures. The sale of the debentures is the primary objective and has priority over any other consideration, such as retention of the warrants.

• • •

Regarding Convair, I see no reason for you to go to San Diego. I feel confident if you call on the telephone immediately to Meador or Loomis and give them full information concerning the subordinated debenture offering, but not including, of course, our recent decision to liquidate the $70 million plus of debentures originally intended to be held by HTC, but pointing out that beyond any doubt this offering will bring the HTC around $20-30 million, and state to Meador or Loomis that they have the HTC's promise to start making payments to Convair in whatever amount Convair requires the very first day that we commence receiving funds from the sale of these debentures. I fully believe that if we lay this on the line, openly and honestly with Convair, so that they know there is some money

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[fol. 1815] forthcoming just over the horizon, I believe they will be willing to wait until we receive some of these funds, provided it does not take too long. Anyway, you can do all this on the phone and tell Meador and Loomis that you are busily engaged in this debenture program and that a trip to San Diego will only delay it, and if you point out that you probably should go immediately to New York in connection with this very matter, and if you offer to come to San Diego if they desire following this trip to New York, by which time you will have perhaps more accurate dates available, I am sure you can obtain their acceptance to this program. Anyway, please try immediately.

• • •

Regarding the letter requested by TWA concerning the forthcoming offering of debentures, copy of which has been sent to me (HRH): Please ask Bautzer and Cook each by telephone for any changes (if any) they recommend in respect to this document. Try to persuade Cook to give you his advice. Tell him I am contacting Bob Campbell right away regarding the fees.

But in any event, I want this letter executed and delivered in the quickest possible time. If it is impossible to obtain Cook's comments, go ahead without them. Give Bautzer a very quick opportunity to seek counsel within his firm as some of these men might be very valuable in studying and revising this letter. In any event, I want the letter executed as quickly as possible, still to comply with the requests contained herein. Then I want it sent to New York air express, picked up at the airport and shot into Leslie by the quickest possible method of conveyance. Call Leslie immediately and say that the letter will be executed today and will be sent today and will be in their hands by tomorrow morning at the latest. Make a second call to Leslie after the letter has been executed and sent. Could be Reed if this is the man to be assured. HRH wants Leslie or Reed or both to be called and say that they letter will be executed today and will be received by them no later than tomorrow morning. HRH wants the second call to either or both of these, saying the letter has been executed and has been sent and is en route. If the letter is already in the mail, please phone them and tell them. Holliday is to decide whether it will be Leslie or Reed or both.

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[fol. 1816]

519
HTC ROMAINE

OPERATING MEMORANDUM

Date 5/11/61 - 5:00 AM

Subject: TWA Subordinated Bonds

From: HRH to R. Holliday

Please move ahead with all possible speed on the program to sell and pay to the HTC the proceeds thereof, the entire $111 million plus of TWA's subordinated bonds. Please consider this authority to do everything necessary to proceed with this program without delay. The directives concerning the secrecy which I gave you before may be violated as required, but no more and no sooner than necessary. Bear in mind that any market is supply and demand, and

if word of availability of this enormous quantity of bonds should suddenly become known up and down the street, it might raise hell with the price. Please work in close contact with Bill Forrester (or whatever other investment brokers you decide to use), but remember this is a tricky program and one which will require the maximum skill and attention of the very best investment brokerage brains, every single minute of every day as to every single detail.

This is a big assignment I am giving you, Raymond, and if you carry it out to my expectation, the rewards and results to you will be very substantial. I would like to have before me the plan of how this program is to be carried out, but you can dictate this in the evenings when it will not interfere with your work, and I do not want you to delay or hold up any slightest detail of this program waiting for me to read these plans, and I do not want you to wait one minute for any further authority or communication from me.

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[fol. 1817]

519
HTC ROMAINE

OPERATING MEMORANDUM

Date 5/11/61 - 5:00 AM

Subject: Regarding the warrant or right to purchase TWA stock which will be attached to the debentures.

From: HRH to R. Holliday

As I stated in my last message, we would like to retain as many of these warrants as possible, but if the debentures simply cannot be sold without the warrants attached, even at a reduced price (reduced by not too much more than the value of the warrant), then in that event we will simply have to let the warrants go along with the debentures. The sale of the debentures is the primary objective and has priority over any other consideration, such as retention of warrants.

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[fol. 1818]

#14
HTC ROMAINE
520

OPERATING MEMORANDUM

Subject Aircraft #26 and #30 Date March 9, 1961
4:50 p.m.

To: HRH

From: Raymond Holliday

1. Odlum recommends that HRH designate both #26 and #30, but in the event HRH will not do this, he recommends that an agreement be sought with TWA whereunder the designation of #26 be rescinded and #30 designated in lieu of #26 in order to give TWA the earliest possible deliveries.

2. Odlum advises HRH that HRH will make a serious mistake if he seeks to obtain an indemnity or waiver, either oral or written, in respect of the TWA law suit by using the last 20 TWA planes as a "quid pro quo" for such an indemnity or waiver.

3. Odlum states that it is his view that the TWA board of directors cannot recall the resolution ordering the investigation and that the best course of action to pursue is to offer the trustees and TWA some "sweetener" such as an option on the four 880s and some financing assistance and endeavor to have the investigation sufficiently thorough to prevent a derivitive suit, but cursory enough so that only a small amount of money would be involved. He states this type of suit can be compromised and settled by agreement of the parties, whereas a derivitive suit settlement would require the approval of a federal court, and further that compromise and settlement of this type of suit would provide insulation against the derivitive suit.

4. Holliday recommends that HRH call Odlum since our meeting of yesterday and discuss the over-all problem.

5. Holliday also recommends that HRH consider the recommendation be made to Bautzer regarding Holcomb. Yesterday Holcomb stated to Montrose that he considered Slack's speech and conduct trecherous and unforgivable and that he was so damned mad he had to bite his tongue while Slack had the floor.

6. Holliday can perhaps give HRH more background information in this regard in a telephone conversation.

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[fol. 1819]

(Letterhead of General Electric Company)

October 5, 1961

HUGHES TOOL COMPANY
3000 Romain Boulevard
Los Angeles, California

Attention: Mr. Howard Hughes
President

Gentlemen:

In past conversations and correspondence with your corporate management, we have endeavored to determine your intentions regarding purchase of spare equipment to support your order for thirteen Convair 990s and four remaining Convair 880s. Although thoroughly sympathetic and cooperative. your management have not been in a position at any time during the past year to commit to purchase of any engines, reversers or suppressors.

After rechecking with your management and General Dynamics and carefully reviewing various means of maintaining inventory of these items without excessive cost, we have determined that it is necessary to reallocate these items to spare parts and firm orders.

We regret this action will result in virtually no spare equipment being available at the time the aircraft are

ready for delivery. However, we thought it best to advise you.

Very truly yours,

/s/ R. L. STODDARD
R. L. Stoddard, Manager
Commercial Contracts

COPIES: Mr. Raymond M. Holliday
Mr. J. G. Zevely, General Dynamics

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[fol. 1820]

Transmitted to HRH in Memorandum No. 644.

(Letterhead of Atlas Corporation, New York 5, N. Y.)

AIR MAIL September 6, 1961

Re NORTHEAST AIRLINES, INC.

Mr. Howard R. Hughes,
7000 Romaine Street,
Los Angeles 38, California

Dear Mr. Hughes:

Since last writing to you on August 28, 1961 concerning Northeast Airlines, Inc., the following has developed:

(1) The insurance underwriters have advised us that the hull and liability coverage of Northeast will be cancelled on September 15th unless advance premiums aggregating about $530,000 are paid prior to that time.

(2) The secured creditors are temporarily foregoing payments of interest as well as principal, but have asked for another meeting in the middle of this month to review the situation. In other words, the secured creditors are not committed beyond September 15th and have advised Northeast that they expect some definitive proposal from Northeast concerning the cash situation as a condition of their continued forebearance.

The overdue trade debt of Northeast Airlines at the present time is about 4½ million dollars. On the basis

of past experience, October and November are the poorest months in the Florida air traffic market. It was with these facts in mind that I indicated in my letter to you of August 17th that 4 or 5 million dollars would be required to carry Northeast through until the beginning of the winter season, after which substantial profits can reasonably be expected. However, with the cooperation of the secured creditors, and assuming the trade debt can be held in line by substantial payments thereon, it is my belief—and that of Northeast's Treasurer—that $3,000,000 might be sufficient for this purpose.

350001

HTC ROMAINE

[fol. 1821] After discussing the matter with Mr. Holliday, I conferred with one of the senior officers of Manufacturers Trust Company as to whether Manufacturers Trust Company would be willing, assuming Hughes Tool Company desired so to do, to guarantee a loan of approximately 3 million dollars from the Trust Company to Northeast Airlines. I was advised today by the Trust Company that as a matter of principle it would be happy to do business with the Tool Company along the lines suggested, provided, of course, that sufficient financial data concerning the earnings, assets and liabilities of the Tool Company were made available to justify a normal commercial loan.

Since my last letter to you I have also been informed from sources in which I have complete confidence that the CAB would approve a transaction of the character above mentioned. As a matter of fact, Mr. Hughes, I have been informed from the same source that it appears quite likely that as an alternative to the collapse of Northeast Airlines, the Board would entertain favorably a proposal whereby the Hughes Tool Company acquired outright control of Northeast Airlines through purchase of the Atlas interests in the airline on condition, of course, that the Tool Company would provide Northeast Airlines with the necessary working capital to assure its financial integrity. Atlas Corporation would be willing to entertain such a proposal from you on fair terms as the best and the quickest means

of resolving a complicated and difficult situation for all concerned. It could well be that if this matter were presented soon enough, the question of the Atlas-Hughes Voting Trust could be resolved expeditiously and in a way which would terminate that problem favorably from a public standpoint.

I hope that you have had an opportunity to read the material I enclosed with my letter to you of August 28th because I believe this shows pretty conclusively that Northeast's future is assured if the immediate financial problems can be resolved.

Unfortunately, time is extremely critical. The insurance premiums are due eight days from today. Even if you were to provide a solution to the problem, it would still be necessary to present the matter to the CAB.

Since the Tool Company and yourself together have the largest stake in the Northeast/Atlas situation, bankruptcy or receivership of Northeast would probably have a greater impact on you—both directly and collaterally as it might affect your other interests—than on anyone else. On the positive side, it is my sincere belief that prompt and appropriate steps by the Tool Company could form the basis of a successful and rewarding venture.

Kindest regards.

Sincerely,

/s/ David Stretch

350002

[fol. 1822] August 17, 1961

TO: MR. BILL GAY, ET AL.

In view of the critical and urgent nature of the attached letter to Mr. Hughes, I would appreciate your bringing this to his attention at the earliest possible time.

D. A. Stretch

[fol. 1823]

(Letterhead of Atlas Corporation, New York 5, N. Y.)

AIR MAIL August 17, 1961

CONFIDENTIAL

Re Northeast Airlines, Inc.

Mr. Howard R. Hughes,
7000 Romaine Street,
Los Angeles, 38, California

Dear Mr. Hughes:

A copy of the TWA complaint in the New York Federal Court action was recently forwarded to me by Mr. Tillinghast. Since the conspiracy charges involving Atlas are prejudicial to the interests of both Atlas and Northeast Airlines and, as you well know, are completely without foundation, I called Mr. Tillinghast to request a meeting with him and Mr. Breech. The meeting was held at the New York office of TWA on August 15th and was attended by James Austin and myself for Northeast and by Messrs. Breech, Tillinghast, Leslie and Cocke for TWA.

At the meeting, I endeavoured to outline briefly facts which negated the existence of the alleged conspiracy. It quickly developed, however, that the TWA people were not interested in that discussion, Tillinghast saying that "this matter was in the hands of Counsel".

The meeting then proceeded to a discussion of merger of Northeast and TWA. Messrs. Breech and Tillinghast made it clear they were not interested. The stated reasons included the following:

(1) That TWA's cash position was not good and was likely to get worse.

(2) That under existing circumstances neither the TWA Board nor the banks or insurance companies could be expected to approve a merger which involved further problems.

(3) That the principal officers of TWA were heavily involved in TWA's existing problems, including particularly the Hughes litigation, so that they had no time to devote to the matter of merger with Northeast.

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HTC ROMAINE

[fol. 1824] (4) That merger negotiations would be difficult so long as Atlas and Northeast were involved in litigation with TWA.

As you know, Atlas and Northeast formally indicated a willingness to merge Northeast into TWA in June, 1960. For a period of over nine months thereafter, Northeast kept its offer open without any action on the part of the TWA Board. During this period, Northeast did not feel it was in a position to discuss merger with any other airline.

As I believe you are aware, Northeast's present financial condition is very critical and Atlas is not in a position to provide additional funds. In view of this and of the action of the TWA people, the possible alternatives open to Atlas, would seem to be:

(1) To sell its Northeast holdings to a third party on the best terms possible, or

(2) To negotiate a merger of Northeast with another carrier and as part thereof arrange for interim assistance.

I know of no prospective buyer of Atlas' holdings in Northeast. With respect to the second alternative I have had conversations with executives of several airlines since the CAB entered its order combining a merger investigation with the route case. Merger with one or two of these would not be likely to receive CAB approval, but one or two others would, I think, be feasible from the Board's point of view. Whether any of these would be in a position to help Northeast in the interim is, however, very doubtful.

In view of your substantial investment in both Atlas and Northeast, and your understanding of the airline in-

dustry in general and the Northeast potential in particular, I hope, Mr. Hughes, that you will agree it is in your interest to assist Northeast in this critical period. The figures indicate that something between $4,000,000 and $5,000,000 will be required to carry Northeast until the commencement of the winter season. With these additional funds and the earnings from the Florida business next winter, Northeast should thus be able to operate successfully through the period of the CAB hearings. I recognize that a further loan would no doubt require CAB approval but in view of the serious problems facing Northeast, I believe the Board would permit the loan to be made. Short of such help it appears that Northeast will not be able to meet its payroll after another thirty days. Obviously the consequences of bankruptcy or receivership of Northeast would be catastrophic both to it and to Atlas.

Despite Northeast's present condition, its growth in the 567

[fol. 1825] first six months of 1961 has been by far the largest of any carrier in the industry and it has now surpassed National Airlines in many of the markets to Florida. Information concerning Northeast's recent operations and its future prospects are set out in a memorandum dated July 17, 1961 from Mr. Lane (Northeast's Financial Vice President) to me, copies of which I delivered to Mr. Chester Davis at the end of July with the request that he forward a copy to you.

Kindest regards.

Sincerely,

/s/ DAVID STRETCH

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[fol. 1826]

HTC ROMAINE
520

OPERATING MEMORANDUM

Date May 8, 1961 (10:50 a.m.)

Subject: Four 880 documents. Opinion on the decision on the fabrics on the 13 600's.

To: Loomis, Robert (Per BG)

From: HRH

1. Bill Gay is to call Loomis and tell him that the documents on the four 880's are in the state of being completed in New York and will be sent out here as soon as the attorneys have finished with them. At the close of business last weekend they had finished them with the exception of 1-2 yet to be completed.

2. HRH wants Bill to ask Loomis if, in his opinion, the colors and fabrics to be decided upon may conform to the American specifications in as much as American has put a lot of time, study and research into this problem. They no doubt have an intelligent answer to these problems and a very good set of specifications. This is not to be taken in any way as an indication that we have any thought of offering any of our planes to American because we definitely have no such intentions. The suggestion regarding the choice of materials is made only because it seems to me that since Burk probably will not come to San Diego and we are choosing another man, it seems to me that by all odds the quickest way to get all of these open issues resolved in a hurry is to simply follow American specifications in each instance. I would like until tomorrow morning before such a decision is made. In the meantime, I would like to know Loomis' reaction to this suggestion and I would like to know what he thinks American's reaction will be but I do not want the matter discussed with or made known to American yet.

[fol. 1827] #71
CAB

HTC ROMAINE

520

OPERATING MEMORANDUM

Date 4-27-61 4:00 P.M.

Subject: Convair Contract

To: HRH from BG

Loomis reiterated that the offer he made on 4-1 in which he agreed to return the money that HTC put up as down payment on the 4 airplanes and absolve HTC of any further consequences as far as Convair is concerned, is still good. He said, however, that Convair does not have a buyer for the planes, and it would be their intention to offer them, and they are obligated, he considered, to offer them first to TWA, and that Convair would offer them to TWA at the same price that HTC had paid for them.

Regarding Bruce Burk and a contract representative for the 13—600's, Loomis said these decisions became more urgent every day and do affect both costs and delivery dates of the airplanes. He said that a decision must be made by tomorrow on the colors and fabrics for the interiors, and if HTC did not make the decision, it would be necessary for Loomis to make the decision himself in order for Convair to comply with the terms of the contract. He would like very much to be able to discuss the interior decision, plus the other decisions that are urgent, with you or, if you cannot, with your representative who you would have empowered to make the decision.

[Handwritten Notation—Sent Copy to Cook 9/29/61—(Air)]

[fol. 1828]

HTC ROMAINE

No. 13.

520

OPERATING MEMORANDUM

Date 3/9/61 6:00 a.m.

Subject: Aircraft #26 and #30.

To: Bill Gay

From: HRH.

Call Loomis and Bew this morning. Call Loomis at 6:50 a.m. and call Bew at 7:30 a.m. Give them the following message. The agreement HRH made with Loomis concerning indemnifying him with respect to the two airplanes absolutely holds good, that we have sent them a telegram (Assuming it was a telegram. It may have been a TWX) designating #26. We did this because we thought it was the first to come through, #26 on the eighth and #30 on the fifteenth. So we went ahead and gave the designation on #26.

We are in some negotiations with Mr. Breech and it would be very disadvantageous for us if we were forced to give the designation for #30 in addition right now. The rest of the week might see the end of these negotiations and we might be quite happy to give the designation on #30 in addition to #26.

Tell Loomis it is definitely our intention to resolve our negotiations with Breech prior to the time for delivery of the second of these two airplanes. We dont want to hold it up one minute. We, therefore, would appreciate it very much if Mr. Loomis would proceed with the completion and acceptance procedures with respect to both airplanes without delay. Relying upon the promise HRH gave to him in HRH's conversation with him about the 15th of February. Having the designation in writing for one of the two airplanes and being assured with respect to the other that we will, by the time it is ready, do one of the following two things: (a) designate it in writing for TWA, (b) take delivery for it and pay for it in cash.

With this understanding we would like to delay as long as possible the time when we must either designate the second

airplane or take delivery of it, yet, not in any way to retard the work, either on the ground or in the air which is being carried on with respect to either airplane and not to retard in any way the actual completion or delivery of either airplane. If, in order to accomplish this, it would be helpful for us to send Convair a telegram (it should be by the same means of communication as was used when we designated #26 yesterday) it would say "with respect to our telegram of 3/8/61 whereby reference is made therein to aircraft serial number 26, approval is hereby granted at your option for the substitution of aircraft serial number 30 in lieu of aircraft serial number 26".

With this thought Convair could go ahead and make delivery of whichever plane is completed first and thereby we could delay until the time when the second airplane is completed and ready for delivery, the designation with respect to that airplane. All of this would possible only

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[fol. 1829] if Mr. Loomis is willing to cooperate fully. Also you should call Bew and obtain his cooperation on this same program. I think Bill should tell both Loomis and Bew that we are not asking them to deceive anybody or conceal any information from anyone that is entitled to have it but, on the other hand, since we do not contemplate that this entire situation will continue more than probably the balance of this week and the week-end, the less said to anybody else, particularly TWA personnel, the happier weekend it will be for all of us.

If Loomis wants this message then whoever drafted the language of the telegram designating #26 yesterday should draft this message (HRH assumes it might have been Cook but Holliday dictated it to RC). The message should be brief and say in substance exactly what HRH has indicated above unless there are legal reasons for using additional language. Do not make any explanation in the message. If sent to Loomis by Chuck Price and if Loomis wants the message then it should be sent from Houston by Chuck Price. It is OK to identify the telegram by serial number or whatever way they might want to identify it but make sure it says the same thing and that it is for our benefit.

cc: Henley

301386

[fol. 1830]

EXHIBIT B TO AFFIDAVIT

GENERAL FORM OF CERTIFICATE OF ACKNOWLEDGMENT

taken from

CIVIL CODE OF THE STATE OF CALIFORNIA

Adopted March 11, 1872, as Amended.
§ 1189

The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form: "State of ....., county of ....., ss. On this ..... day of ....., in the year ....., before me (here insert name and quality of the officer), personally appeared ....., known to me (or proved to me on the oath of .....) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same."

PREREQUISITE TO ACKNOWLEDGMENT: KNOWLEDGE OF OFFICER: EVIDENCE

taken from

CIVIL CODE OF THE STATE OF CALIFORNIA

Adopted March 11, 1872, as Amended,
§ 1185

The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf.

[fol. 1830a] Acknowledgment of service (omitted in printing).

[fol. 1923] [File endorsement omitted]

[fol. 1924]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY, and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, METROPOLITAN LIFE INSURANCE COMPANY, IRVING TRUST COMPANY, ERNEST R. BREECH, DILLON, READ & CO. INC., BEN-FLEMING SESSEL, JAMES F. OATES, JR., HARRY C. HAGERTY and CHARLES C. TILLINGHAST, JR., Additional Defendants on Counterclaims.

MEMORANDUM IN SUPPORT OF APPLICATION OF HUGHES TOOL COMPANY FOR AN ORDER UNDER RULE 16—Filed September 26, 1962

Preliminary Statement

This memorandum is submitted in support of the application of Hughes Tool Company ("Toolco") for an order under Rule 16, Federal Rules of Civil Procedure, authorizing and directing the Special Master to make a full and [fol. 1925] complete inquiry with regard to the issues in this case and to report to the Court his recommendations for a pre-trial order to be entered herein. The application is made pursuant to the recommendation of the Special Master and seeks an order in the form suggested by him. (Transcript, September 15, 1962 hearing, pp. 98-106).

Recognizing that Toolco had not been apprised of the nature of TWA's claims, either through TWA's pleading itself or through the oral examination of TWA's principal

executive officers, the Special Master on September 15, 1962 recommended that further discovery be suspended until there had been a formulation of the issues and a statement by the parties of the ultimate facts they anticipated establishing. Thereafter, at the close of the deposition session held on September 21, 1962, the Special Master expressed the view that a "serious question" had been raised with respect to the jurisdiction of the Court which must be dealt with at the "threshold".* It is Toolco's position that a definition of the issues and a statement of the ultimate facts relied upon by TWA will either (a) lead to the dismissal of the complaint or (b) enable Toolco to conduct more meaningful and effective discovery looking toward a prompt [fol. 1926] disposition of the action.

The complaint is 38 pages of legal conclusions, alleging a conspiracy reaching back to 1939. Discovery proceedings to date cover over 7,000 pages of deposition and 188 documents of over 2,000 pages of printed matter. The Special Master has presided over these proceedings on a day-to-day basis since February 7, 1962. The necessity of becoming acquainted with the proceedings to date would, without question, constitute a heavy burden on the Court. Accordingly, Toolco endorses the suggestion of the Special Master that proceedings under Rule 16 for a definition of the issues be referred to him. The proposed order submitted herewith in the form recommended by the Special Master would require the Special Master to conduct pre-trial conferences, to report periodically to the Court the progress being made and to submit to the Court a recommended pre-trial order.

TWA and the additional defendants appear to be resisting the procedure suggested by the Special Master on the grounds that discovery by all parties, however lengthy, is necessary prior to a definition of the issues. They have also argued that the case is not ripe for the entry of a final pre-trial order. Toolco submits, however, that a definition of issues at this time will result in expedited discovery and [fol. 1927] more efficient disposition of this litigation.

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* A copy of the Special Master's statements of September 21 is annexed hereto as Exhibit A.

Moreover, Toolco is not now seeking the entry of a final pre-trial order but rather seeks an order which will clarify and define the issues so that further discovery may be meaningful.

Discussion

Point I

A Definition of the Issues is Prerequisite to Further Proceedings Herein

A definition of the issues and a statement of the ultimate facts TWA expects to prove is essential to effective progress toward an early disposition of this litigation. Prior to conducting further discovery or taking any other steps herein the Court (a) should satisfy itself that jurisdiction exists over the subject matter of the complaint and (b) should permit defendant to apprise itself of the factual basis underlying the charges it must meet.

A. *A definition of issues is required so that the Court may satisfy itself of its jurisdiction.*

There being no diversity of citizenship, this Court has jurisdiction over the cause only if the allegations of the complaint are based upon facts which, if proven, would amount to violations of the antitrust laws. However, as [fol. 1928] the Special Master observed, the complaint of TWA while it may comply with the requirements of notice pleading consists of allegations which are "largely conclusions of law. . . ." (Transcript of September 15, 1962, p. 101). The complaint is barren of factual allegations relating to antitrust violations. In view of the serious challenge of Toolco as to the existence of facts supporting the jurisdiction of the Court over the subject matter of the complaint, TWA's mere assertion that there has been a violation of the antitrust laws is an insufficient predicate for jurisdiction. As more fully set out in Point B, *infra*, Toolco's efforts, including discovery proceedings had to date, disclose that there are no facts supporting a charge of antitrust violation and further establish, by the admis-

sions of TWA itself, that the facts which have been shown negate the existence of any antitrust violations by Toolco.

Toolco has sought since August 17, 1961, at the hearing before Chief Judge Ryan on TWA's application for the assignment of this matter to one judge for all purposes, to determine the factual basis for the charges against it and has been met by constant opposition from TWA. Judge Ryan had suggested that there be an exchange of statements as to the matters in contention. TWA ignored the suggestion of the Chief Judge as well as the opportunity presented [fol. 1929] to it shortly thereafter to file affidavits setting forth its contentions in opposition to the motion to dismiss the complaint which Toolco filed.

Having thus been unable to obtain TWA's cooperation in learning from it the ultimate facts upon which the complaint was based, Toolco anticipated that it would be apprised of what it was that plaintiff claimed when it examined the chief executive officers of TWA. Although a consistent and conscientious effort was made, until the Court ordered his deposition terminated, to have Mr. Tillinghast, the President of TWA and the individual who determined to file the complaint, state what actions of Toolco are alleged to have been contrary to the antitrust laws, Toolco was unable to elicit from him any information which would shed light on the justification for filing an antitrust complaint. The lack of such justification appears from the transcript excerpts set out in the affidavit of Chester C. Davis, sworn to September 13, 1962. The situation confronting Toolco was summarized by the Special Master as follows:

> "I had thought that before we completed the testimony of Mr. Tillinghast, I would be informed about the ultimate facts that the plaintiff was relying upon to support the various allegations of its complaint, which are largely conclusions of law, but do conform [fol. 1930] to the requirements of the federal rules concerning such complaints.
>
> "I did not think that with the chief executive officer of the plaintiff being deposed, we would reach a point at the conclusion where I would not know the ultimate facts upon which the plaintiff was relying to establish

those various allegations insofar as they had a bearing upon a violation of the antitrust laws.

"But I did find that I was in that position. I think that has an important bearing upon what is equitable in asking testimony of principal witnesses of the defendant in this case, and when that should be required." (Transcript of September 15, p. 101)

Accordingly, Toolco submits that before any further proceedings are had, the Court should compel TWA to identify the ultimate facts upon which it bases its complaint so that the Court may satisfy itself with respect to the jurisdictional question.

B. *A definition of issues is required so that Toolco may be informed of the charges it must meet.*

Toolco is entitled to know the nature and factual basis of the charges against it, not only to test the jurisdiction of the Court but because, as a matter of simple fairness, it should not be required to defend itself in a lawsuit or to testify in discovery proceedings until it knows what it is defending itself against, particularly since the complaint charges what amounts to a criminal violation of the antitrust laws.

[fol. 1931] Toolco is not in the position of the usual defendant in an antitrust case who should have some idea of the basis of the charges. Toolco cannot, even by indulging in the most fanciful speculation, determine what the present management of TWA is complaining of other than that Toolco, as a 78% stockholder, asserted managerial interests in its subsidiary. Thus, Toolco cannot understand what facts TWA will rely upon to negate the exemption from the antitrust laws conferred by the Civil Aeronautics Board ("CAB") approval of all Toolco-TWA transactions, nor can it understand how TWA expects to prove that Toolco acted illegally in concerning itself with "the managerial efficiency, the operating economy, and the financial integrity of the controlled carrier," (1950 Further Control Case, 12 CAB at p. 192) when such concern with TWA's affairs was expressly approved by the CAB. And if TWA is proceeding

in the belief that CAB approvals were wrongfully obtained because that agency was ill-informed of the facts underlying Toolco-TWA relations, the question is raised as to why TWA should attempt the improper procedure of collaterally attacking an administrative finding, when it might air its grievances before the CAB. TWA had a ready-made opportunity to do so when the Northeast Control Case was [fol. 1932] heard, but failed to take advantage of that opportunity.

It will be recalled that one of the issues in the CAB proceeding concerned itself with the legality and propriety of Toolco's control over TWA. TWA received notice of the proceeding and could, of course, have participated therein. Special counsel for TWA and the senior officers of TWA conferred with Bureau Counsel, and a representative of special counsel was present as an observer throughout most of the hearing and presumably furnished Bureau Counsel with whatever facts were available to them. Bureau Counsel, however, was unable to present any evidence on the issue relating to TWA-Toolco relationships. That issue read as follows:

> "Whether, in connection with the acquisition and/or financing of aircraft equipment by TWA, Toolco has exercised its control over TWA in compliance and conformity with the Board Order of October 17, 1944, in Docket 1182 (6 C.A.B. 153) as amended, and whether with respect to such acquisition and/or financing Toolco has otherwise conducted itself in a manner authorized or approved by the Federal Aviation Act of 1958, as amended, and the regulations and orders of the Board thereunder." (Report of Prehearing Conference, App. 1, p. 1.)

The examination of Messrs. Leslie and Rummel to date developed admissions by TWA which negate the existence of antitrust violations by Toolco. Mr. Leslie, for over 15 years TWA's chief financial officer, testified that he had never heard of any attempt by Toolco to force TWA to boycott any supplier of aircraft or to force it to use one aircraft supplier rather than another. (Tr. p. 6973.)

[fol. 1933] The deposition of Rummel to date shows that:

(a) TWA and Toolco consistently sought to create and foster competition among manufacturers of commercial transports for the purpose of obtaining advantages for TWA (Rummel Tr. 64-65, 123-135A);

(b) TWA under Toolco control entered into negotiations with practically every potential supplier of commercial transports in the free world for the purpose of obtaining the most suitable equipment for TWA's use (Rummel Tr. 312-347, 350-413, 428-518);

(c) The ordering of jet equipment by Toolco for use by TWA was done with the full knowledge and approval of TWA's management pursuant to contracts drawn up in accordance with TWA's specifications and the number of aircraft so ordered was in accordance with the recommendations of TWA's personnel (Rummel Tr. 518-520, 635-639, 876-902, 903-918); and

(d) Toolco did not use TWA as a "captive market" to which to supply commercial transports which Toolco had ordered but, to the contrary, when Toolco had become at least morally obligated to acquire certain Viscount aircraft [fol. 1934] and TWA's management determined that it did not desire to acquire such aircraft, Toolco accepted this decision and fulfilled its moral commitment without cost to TWA. (Rummel Tr. 385-399, 405-409, 424-428.)

Under these circumstances, Toolco cannot be expected to proceed with expedited and meaningful discovery until after TWA has disclosed the basis for the charges set out in the complaint.

[fol. 1935] Point II

It Is Essential to the Proper Conduct of a "Big Case" That the Issues Be Defined at an Early Stage

When TWA requested that this case be assigned to one judge for all purposes, it did so on the grounds that this was a "big case" involving complex transactions which could be expected to extend over a considerable period of time. (Affidavit of John F. Sonnett, sworn to the 17th day

of August, 1961.) Having itself urged that the special procedure available under the local rules for "long and complicated cases" (General Rule 2(b)) be adopted for this case, opposition of TWA to proceeding in the manner uniformly suggested for the conduct of big cases is not readily understandable.

In oral argument before the Court on September 19, 1962, counsel for TWA opposed the concept of a Rule 16 procedure at this time, urging that such a procedure should not be entertained prior to the time at which TWA has conducted its discovery. Toolco submits that this opposition to the Rule 16 application and the insistence upon the examination of Toolco prior to the time at which TWA states its contentions and the issues are defined, is further evidence of plaintiff's purpose to avoid a disclosure that its complaint lacks foundation in fact and in law and is a continuance of its effort to use the discovery rules as a [fol. 1936] device for coercion and harassment. Judge Dawson's statement at the 1958 Seminar on Protracted Cases is particularly apropos. He says:

> "A person would have to be partjcularly naive if he did not realize that today certain lawsuits are started and discovery proceedings instituted not so much to secure recovery at a trial as to create sufficient expense and harassment to the adversary to force a settlement for a substantial nuisance value. See 'Tactical Use and Abuse of Depositions under the Federal Rules,' 59 Yale L.J. 117 (1929)." 23 F.R.D. at 432.

There is no justification for TWA's assertion that prior to stating its contentions or defining the issues it must be permitted to conduct discovery. Surely TWA cannot be saying that it has filed a complaint without knowing what it was charging in the expectation that it could establish charges by the testimony of its adversary. While TWA may, upon a proper showing, be justified in requesting the examination of Toolco for the purpose of discovering *evidence* as to facts which will support its contentions or to ascertain the basis of Toolco's defenses, it cannot use the discovery device in order to ascertain whether a cause

of action exists at all. Such a procedure was condemned by Judge Prettyman in his *Report on Procedure in Anti-Trust and Other Protracted Cases*, 13 F.R.D. 41, 67. He said:

> "Investigations not related to issues presented for litigation in a pending court case, in civil matters, are no part of the judicial function, and the compulsory processes of the judicial system should not be made available for other than judicial purposes. If a plaintiff brings bona fide charges, it may discover such relevant evidence as the respondent possesses. *It* [fol. 1937] *cannot pretend to bring charges in order to discover whether actual charges should be brought.* Therefore, if, in the course of conferences prior to the trial of a civil action, a judge concludes that the Government, or other plaintiff, has no knowledge of charges of such specificity as to permit understandable and triable statement, trial should be postponed until the lack of particularization can be fully remedied, or the case should be dismissed." (Emphasis supplied)

TWA's argument that discovery should be completed prior to the entry of the pre-trial order completely misconceives the function of Rule 16 procedure in the "big case". All the authorities are in agreement that definition of the issues is an essential condition precedent to effective discovery. The Judicial Conference of the United States in its *Handbook of Recommended Procedure for the Trial of Protracted Cases* recommends that a definition of the issues precede discovery which may then be confined within the boundaries set by the defined issues and discovery rules. In discussing this recommended procedure, the handbook states:

> "Yet, extensive discovery cannot be kept within reasonable bounds unless there is some tentative understanding of the issues that are to mark the bounds of permissible discovery. Some bounds must be fixed at an early stage if the case is not to become impossibly diffused and confused. The remedy here suggested is that each side be required to submit in writing, early

in the pre-trial proceedings, a tentative statement of the issues. After a suitable interval, these may be discussed at a pre-trial conference and consideration can be given to limiting discovery, as, for example, in terms of subject matter, geographical area, and period of inquiry. Initial discovery will then proceed in [fol. 1938] conformity with the bounds established by the tentative statements and the decisions reached at the pre-trial conference thereon. With this chart of the course to be followed, the parties will be likely to call upon the court with less frequency for hearings on motions and objections.

"This is not to suggest that the efforts of the trial judge should be directed entirely to cutting down on discovery. On the contrary, the judge's efforts may well be directed first to eliminating false issues, and when the real issues have been defined, to expediting full discovery by both sides within the confines of those issues. . . ." *Id.* at pp. 37-38.

It is generally recognized that in "big cases" especially issue formulation and establishing contentions of the various parties are essential conditions-precedent to the further conduct of orderly litigation. The Prettyman Report aptly states the problem:

"In the cases with which this report is concerned, complaints and charges are usually couched in broad terms and are met with general denials or demands for strict proof for lack of information. Under the view as to the function of pleadings which has prevailed in the Federal Rules of Civil Procedure, 28 U.S.C.A., the complaint and answer cannot in most cases of the type now under discussion be relied upon as the means of framing the issues with sufficient definiteness. . . . At some time subsequent to the filing of the pleading, reduction of the generality of the complaint to specific disputed propositions must be made in the interest of efficient conduct of the trial and of proper disposition of the case. The more specific the issue for trial, the less complicated and time-consuming the trial can be and the more accurate the result.

> "Whatever may be the objections and difficulties to the specification of issues in ordinary actions, the necessity for such specification in the cases with which this report is concerned is so great as to require that it be done no matter what the objection or difficulty." [fol. 1939] (Committee Report on *Procedure in Anti-Trust and Other Protracted Cases*, 13 F.R.D. 41, 66 (1951), adopted by the Judicial Conference of the United States.)

Experiences subsequent to the preparation of the Prettyman Report have served to emphasize the necessity for issue clarification. Thus, at the 1958 Seminar on Protracted Cases conducted jointly by the Committee on Pre-Trial Procedure of the United States Judicial Conference and a panel of federal judges appointed by the Chief Justice of the United States, it was said:

> "We would recommend that *all* preliminary matters be held in abeyance until there has been a particularization of the issues. Unless this is done, the necessary control and supervision of the proceedings may be lost." 23 F.R.D. 319, 413 (1958).

These views were incorporated by the Judicial Conference of the United States in its *Handbook of Recommended Procedures for the Trial of Protracted Cases* wherein it is recommended that after assignment to one judge for all purposes, the following basic steps be followed:

> "3. Definition of the issues, which, it is increasingly recognized, should be accomplished through pre-trial conferences.
>
> "4. Confining discovery within the boundaries set by the defined issues and the discovery rules." (*Id.* at 23, 24)

It is difficult to imagine any justifiable ground for a refusal by opposing counsel to accede to the suggestion of the Special Master that Rule 16 procedures be utilized. Their [fol. 1940] proper interest would be better served by per-

mitting resolution of the areas of contention prior to making further effort at discovery. Surely if their purpose is an expeditious resolution of this entire matter, they cannot object to a procedure which permits Toolco to obtain in the most efficient manner the material it is entitled to. Nor should it object to a procedure which will similarly afford them a basis for proceeding with efficient discovery. It is to the advantage of TWA and the additional defendants as much as it is to Toolco's advantage to determine all the issues and contentions in the case so that when their turn to discover arises they will be in a position to obtain the information they require with a minimum of concern about side issues and ancillary matters which will not be germane at trial.

Conclusion

Wherefore, it is respectfully requested that the Court enter an order under Rule 16, Federal Rules of Civil Procedure, in the form recommended by the Special Master.

Respectfully submitted,

Chester C. Davis, Esq.
Attorney for Defendant
Hughes Tool Company
Office and P. O. Address
120 Broadway
New York 5, N. Y.

Dated: New York, N. Y.,
September 25, 1962.

[fol. 2011] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

vs.

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants.

Before: Hon. Charles M. Metzner, District Judge.

Transcript of Proceedings—September 19, 1962

[fol. 2012] APPEARANCES:

Mr. Davis, Mrs. Lea, Mr. Cook, Mr. Cox, Mr. Sonnett, Mr. Bromley, Mr. Stewart, Mr. Kaminer, Mr. Hupper, Mr. Barr, Mr. Bradner, Mr. West, Mr. Harrell, Mr. Tenney.

The Court: Mr. Sonnett.

Mr. Sonnett: May it please the Court, if the Court doesn't hear me I wish to be advised that I practically lost my voice. I will do my best.

The basic position which I would like to advance to the Court today is that on the basis of the entire record to date the Court should direct that TWA may proceed with the deposition of Howard R. Hughes Monday in Los Angeles pursuant to the subpoena issued from that court and that should be done whether or not the depositions cur- [fol. 2013] rently being taken here continue or are suspended.

The special master has ruled, as your Honor has noted from the record, I am sure, that Hughes is bound personally by the adoption, authorization, ratification or whatever

it was that he did in respect of a personal appearance at some time. The question of the forgery we believe to be perpetrated and the attempted fraud on the court expressly has not been passed upon by the master, that being before your Honor.

The reasons why we think that TWA should be permitted to go forward now in respect of the Hughes deposition are that the depositions have been in progress since early this year. We have had a total, I believe, of nine pre-trial conferences with your Honor. This will be the tenth, according to my count, since this case was assigned to your Honor for all purposes.

Without attempting to review the prior history of any of those which your Honor certainly has clearly in mind, it was clear beyond any doubt in July at a hearing before you, as you observed at the time, your Honor, that Mr. Hughes [fol. 2014] was obviously ducking service. It was also represented at that time that Mr. Hughes was not represented by any counsel in this case and that is still the state of the record.

The statement was made before the special master at page 179 of Saturday's transcript, in which Mr. Davis stated, "I am not appearing as counsel for Mr. Hughes. Mr. Hughes personally is not subject to the jurisdiction of this court. I did state on the record before Judge Metzner that I have and am giving advice to Mr. Hughes with respect to him individually and like all counsel act as counsel for clients to the extent to which they consult me."

Your Honor will note the following discussion and at the bottom of page 180 Mr. Davis says, "I am not appearing in this action on behalf of Mr. Hughes."

What Mr. Rankin did rule on Saturday, as I understand his ruling, was that Hughes Tool Company would be required to produce Mr. Hughes at least as a managing agent at some date to be determined.

The Court: I don't gather that, Mr. Sonnett. Point to the record where Mr. Rankin found that Mr. Hughes should be produced as a managing agent.

Mr. Sonnett: At page 99 of the transcript—commencing at page 98, at the bottom:

[fol. 2015] "The Special Master: That the subpoena is binding upon Mr. Hughes and as I construe the subpoena it is binding on Mr. Hughes to appear on September 24, 1962, or in the alternative as fixed by the court at any other time that the court lawfully orders Mr. Hughes to appear in the courthouse at Los Angeles. I feel that there is such a close connection between Mr. Hughes as evidenced by some of the documents that I have seen and the fact that he is a sole owner of Hughes Tool Company, that the Hughes Tool Company is responsible for Mr. Hughes with regard to this subpoena and its validity and whether it is authorized to act, and I advise and instruct counsel for Hughes Tool Company to write Mr. Hughes and inform him about my construction of this subpoena and that I will consider it an express waiver if he fails to communicate with the court promptly and advise of any other construction of the subpoena either as to its validity or when he should be required to appear and if at any future time in the case Mr. Hughes should claim the service of the subpoena is not authorized and not a valid instrument, not binding as I am construing it, I shall entertain a [fol. 2016] motion to strike the answer of Hughes Tool Company and enter a judgment against it in this proceeding."

In another place in the record, your Honor—I shall try to put my hand on it—the Special Master stated in substance that he was piercing the corporate veil in this connection.

The Court: I had a feeling from reading the record that the Special Master was not meeting your point on a request that he rule specifically that Mr. Hughes was a managing agent. I think you have to interpret that language rather than saying that language is a holding. He did duck your direct question and I don't consider that an answer, some forty pages later to be an answer.

Mr. Sonnett: I had in mind 181 of the transcript, in which the Special Master continued as follows:

"I will incorporate in my direction to counsel for Hughes Tool Company the order that if Mr. Hughes

does not accept the interpretation that I make as to the authority of the service of that subpoena and the requirement to produce documents under it, that he so inform the Special Master by Friday of next week. [fol. 2017] I am imposing this responsibility and giving notice to counsel for Hughes Tool Company because I am piercing the corporate veil as to Hughes Tool Company, applying what I hope is clear notice of every substantial sanctions, not against Mr. Hughes but against the Hughes Tool Company in case there should be at some later date a failure to respond to the subpoena."

Now, since your Honor has put it so clearly, I agree, I must say, that I think that what the Special Master said on this point does require some construction and I think probably that his language is a holding that Mr. Hughes is at least a managing agent of Hughes Tool Company in the sense that he ruled. But certainly he did not explicitly so state.

In any event, your Honor, in the light of the record before you, it seems to me evident that with all of the history of the efforts to find Mr. Hughes and serve him personally, with the, I believe, deliberate effort to conceal his whereabouts so that we couldn't serve him, with what I believe to be a deliberate campaign to frustrate the orders of the court in that regard which are clear and explicit, with what I still believe is established beyond doubt as a forgery and fraudulent authorization—and I would like to [fol. 2018] come to the attempted answer to that in a moment —and with the acceptance on September 6th without reservation of a subpoena calling for his appearance, that rather unusual procedure being acceptable to the marshal in California because he was supplied with the affidavit by Mr. Davis which said, "I have been authorized in writing by Howard R. Hughes to accept service on his behalf of a subpoena for his appearance as a witness on deposition in the above-entitled action."

It seems to me that in any event the action which was taken by Mr. Davis on September 6th and the action which is alleged to have been taken by Mr. Hughes on September

11th, the so-called acknowedgment by the notary, perhaps as a matter of contract law, constitutes a ratification, and perhaps in that connection it may be binding. I don't know.

I do know that during the period from September 6th when Mr. Davis was out there for the purpose of attempting to render moot our application to strike their answer for failure to answer the interrogatories, there was ample time then to have submitted to Mr. Hughes the form, for example, of authorization that we had initially proposed which was, clear, explicit, contemplated a proper form of [fol. 2019] acknowledgement and actual execution by Mr. Hughes, and so on.

Therefore I think, your Honor, that the present state of the record is unsatisfactory in the sense that putting aside for the moment the question of the date when Mr. Hughes appears or is supposed to appear, I am not clear what kind of a procedural morass we may get into if he doesn't show up.

I am not clear whether and just what would be involved in the Special Master's suggestion at that time that he would strike the answer of Hughes Tool Company and presumably direct the default judgment in our favor.

The Master apparently is proceeding on the assumption that he need not reach the question of the power of the court over the individual to require his appearance like any other individual under penalty of a citation for contempt, one of the powers the court has with respect to any individual who disobeys a judicial process.

I do think that your Honor's observation on September 6th was a correct one. The best proof of the pudding is in the eating. The best solution to this and the safest in order to avoid creating a situation of great ambiguity, is to see [fol. 2020] whether or not he will show up as directed on the 24th or whatever date your Honor directs he shall show up.

I think that that is the only way we can all be sure of the record, and if there should ever be need to apply sanctions the court is in a position to apply them.

On the question of the time as to when he should appear, in the original order which your Honor signed back in February it was contemplated that the entire deposition as

scheduled would be completed by now. I represent to your Honor that with diligence on the part of examining counsel it could have been.

I think that your Honor will find that in examining the record here there has been an illustration of delay, stalling tactics, in the depositions, and as recently, I might add, as last Thursday, we are in the process of having the second witness, Mr. Leslie, who has been on three days, and I think we barely scratched the surface, and for reasons of business convenience we agreed to have Rommel go in.

An examination of the Rommel record, I think, will satisfy your Honor that the examination has been conducted in such a way as to make it interminable if allowed to pro- [fol. 2021] ceed. In point of fact, whenever the witness, despite Mr. Davis' best efforts to avoid this result, gets into something of real substance in the case, Mr. Davis backs away from it. Then when the Special Master seeks to have him deal with this, Mr. Davis asserts, and I believe correctly on this point, that if you please, he will conduct this the way he wants to whether the parties like it, or, indeed, even the court likes it.

That reference I have at hand here and if your Honor will take the time to note just what is happening in these depositions in an effort to delay and stall this matter, the witness Rommel, when asked a question by Mr. Davis as to whether the witness Rommel had ever been directed not to have contact with plane manufacturers he said yes. He said that it happened by personal direction of Howard Hughes to him in respect of Douglas Airplane, Electra Aircraft and Convair 990.

The minute Mr. Davis started to receive that answer he backed away from it and sought to avoid the subject and protest was made; there was a wrangle and more of the colloquy that fills up this record, so many pages of it, and Mr. Davis then announced to the Special Master that he [fol. 2022] was going to do this his own way.

He stated at page 271 of the transcript, amongst other things, "Whether I do it"—that is, conduct the examination —"in a manner which is satisfactory or pleasing to either Mr. Williams or other counsel here or may I suggest even to the court, at this stage of the proceedings, I am entitled

to my discovery proceeding as I think is best designed to develop the facts in a manner which I can understand."

Now, the Tillinghast deposition dragged out interminably. When it is realized that Mr. Tillinghast was president of TWA for only a few short months when this case was filed, and when it is recognized how many, many weeks were taken on this deposition, it seems to me that it is a clear case there of delay beyond all reasonable bounds.

Your Honor will recall that in an effort to deal with that we had some pre-trial conferences and we urged that the only sure cure for this was a program of alternating or concurrent depositions. Your Honor directed at one point Mr. Davis should suspend his efforts to examine in either of the so-called counterclaim and get the case moving forward, and several times we have stated that we wished that the case would progress more rapidly, and indeed it [fol. 2023] should because the financial problems continue and the problem of a trial date is a very important matter to this airline.

At this rate, if we were just to forecast the rate of progress based on what happened to date in the deposition program, Mr. Davis would be at this for another year or two beyond a doubt.

I think that when the Hughes Tool Company initially represented that a deposition program, by the submission of dates they contemplated a couple of weeks for witnesses and so on, and it was possible that they were perhaps a little optimistic.

On the other hand, what they have done far exceeds any representation that they ever made to the court in any way about the length of time they would need.

I think that the needs of TWA to prepare its discovery, particularly in respect to Howard R. Hughes, is acute. Hughes, as your Honor will see from the record before you, is the one man who knows the whole story.

Annexed to our papers are extracts from his call messages, his directions to people as to how to do this and how to do that, both before and after December of 1960, that [fol. 2024] same exercise of absence of dominion and control in respect of aircraft that characterized the situation for years.

He is the one who knows best the extent to which the motivations for what we think are plain violations of law, were tax motivations. I think that when we take his deposition we could decide at the end of that whether TWA is going to need another twelve witnesses or another two witnesses or maybe no witnesses before it would be ready to ask your Honor to fix a trial date.

We have had Noah Deatrick, for many years the chief lieutenant of Mr. Hughes. Deatrick is around seventy. I don't know how much longer—nobody knows how much longer Mr. Deatrick is going to be around.

Take Mr. Hughes himself. I know nothing about this man's health except what I read in the public press, but I think that the failure to have his evidence as a matter of record for use in this case would be a tragedy.

So, your Honor, it seems to me that consistent with the history of the case, the amount of time that you have allowed them, the approach by Rule 4 of concurrent depositions, the fact that they can do concurrent depositions—[fol. 2025] they have very distinguished counsel in addition to Mr. Davis—they have Mr. Cook recently take a deposition—it seems to me that the only way to really move the case along is a program of concurrent depositions.

I therefore strongly urge your Honor to consider that and to direct it before the evidence escapes us for all time, perhaps: To get it reduced to question-and-answer form under oath.

I don't believe that on the forgery aspect, unless your Honor has any question, that I need to go beyond what is in my reply affidavit which I filed with the court Monday.

I submit to your Honor that nowhere has anyone asserted yet, hearsay or otherwise, that Howard Hughes personally signed the document which is said to be an authorization.

The Court: How do you interpret those words that were used in Anderson's affidavit of acknowledgement, in which he says, "Said Howard R. Hughes further acknowledged to me that he confirms such authorization to Mr. Davis in a writing to me as follows:"?

Mr. Sonnett: I interpret that with particular reference to the background which resulted in document of so-called [fol. 2026] acknowledgement coming into being, your Honor

will find the Davis affidavit, Mr. Davis asked California counsel to get the California statutory form of acknowledgement of Mr. Hughes and have him execute it.

He went out there and there was a formal acknowledgement but it is not the statutory form. There is a big difference. The California statutory form requires an oath as to personal execution of the document. That is conspicuously missing. All that we have here is that having been caught at it Mr. Hughes is willing to, by this acknowledgement procedure, try to make it look good and adopt it.

The Court: Suppose he did adopt it. You say that this doesn't even go that far?

Mr. Sonnett: I would be prepared, your Honor, to concede that if in fact he appeared before a notary public and if in fact he made the oath which it is stated he made, if that be the fact, that probably is some kind of a ratification under some principles of contract law. But I know of no way that the process of the United States District Court can be treated in that fashion.

In the first place, as your Honor well knows, the rule in [fol. 2027] respect of service of subpoenaes, requires personal service. Therefore my initial suggestion, when much was sought to be made out of a desire to avoid embarrassing Mr. Hughes, my initial suggestion was that of his intermediates, Mr. Glen or anybody serve him personally with the subpoena and make an affidavit of service, and I would take that. They didn't see fit to do that.

That is the very first thing I suggested, trying to avoid any embarrassment. I am not interested in embarrassing this man.

The Court: You are getting away from my question. If you were in negotiation with Mr. Bormley who represented a client on the other side looking toward the settlement of a lawsuit and you wrote a letter to Judge Bromley stating that my client has confirmed to me in writing the following settlement, what do you think Judge Bromley would think if he received such a communication? Wouldn't he think that your client signed such a document?

Mr. Sonnett: I think if those were all the facts he might well, but that is not our case. If your Honor will go back briefly on the chronology, what we find on July 12th, you

[fol. 2028] directed that interrogatories be answered. You observed, and entirely correctly, at that time that it appeared that Mr. Hughes was ducking service, and he was.

Then we find that we were back again before your Honor on July 26th in connection with an extension of time being sought by the Hughes Tool Company to answer the interrogatories.

Meanwhile apparently Mr. Davis has sent out to Mr. Hughes a form of authorization designed by Mr. Davis but never shown to us that was dated in late June. Mr. Hughes had, according to Mr. Davis—he got that form and that form was the one that tried to import into the authorization a condition that Mr. Hughes after all would be willing to appear or accept service to appear provided he was guaranteed in fact his turn at bat wouldn't come for a year while Mr. Davis took a lot of depositions. However, Mr. Hughes did not sign the Davis form.

Whoever prepared it, and I don't know who did, and whoever signed it, and I don't know, except I know it wasn't Mr. Hughes, they got a little bit of a form without a date on it, and at some point that little bit of a form was the one sent to your Honor and your Honor returned it because your Honor had questions about it, and when you returned [fol. 2029] it with a letter to counsel you stated that you expected that counsel would comply with the court's order to answer the interrogatories on August 27th.

Now, what happened? There wasn't any effort to comply with the court's order whatsoever. Instead, after we moved to strike the answer for wilful default—and I think it was wilful and aggravating—Mr. Davis hopped on a plane and rushed out there with the idea of having the deputy marshal at 7:15 a.m., California time, accept these representations so Mr. Davis can accept the subpoena and then report to you that our motion was moot because there was service?

Why the 7:15? Well, of course that strategy was that we were before your Honor at eleven-thirty that day.

The Court: You didn't state it correctly. 7:15 is 10:15 here, fifteen minutes before you walked into the courtroom.

Mr. Sonnett: Yes, your Honor, but I think Mr. Davis had a little bit of time to palaver with the marshal before the marshal agreed to accept the affidavit.

I have the return and the affidavit, a certified copy, and [fol. 2030] that is the strategy. The strategy was not to answer the interrogatories which you had twice directed be answered and then, B, to ram down the court's throat and ours the form of authorization unsatisfactory certainly to us and presumably to the court as to form.

And then counsel making that good by getting the marshal to take it and at no time between September 6th and September 11th when this so-called acknowledgement was done —at no time did Mr. Davis get a-hold of Mr. Hughes while he was in Los Angeles and ever say, "Look here, this thing is getting difficult. Sign this form and acknowledge it in regular statutory form and swear that you signed it."

He didn't do that.

What happened was after we found the forgery he decided this is serious enough for him to consent to notice it and he would therefore go through some ceremonial before a notary public and we still don't have his signature on anything. I submit to your Honor that it was a calculated program of frustration in regard to the orders of the court. I don't think that Mr. Hughes or anybody else ought to be allowed to do this, and I think that that is [fol. 2031] exactly what was done.

The Court: That still doesn't mean, by the use of the words "confirmed in writing" that Mr. Hughes is not saying that he signed that document, and I could also point out, Mr. Sonnett, when you related the background leading up to this, that you left out a preface which is that the Special Master said that there were alternative roads to follow, either Mr. Davis was to produce an authorization for him to accept service of a witness subpoena or he would direct that Hughes Tool Company answer certain interrogatories.

We have reached the point when that authorization was not forthcoming. We then had the motion before the Special Master for interrogatories and, as I recall, an appeal was taken by Mr. Davis from the Special Master's ruling on interrogatories.

So I was proceeding on the same basis the Special Master was, that these interrogatories would be answered by the date fixed unless an authorization was produced. So with

that background, then you can go into what you have already said.

Mr. Sonnett: There is one additional element, your Honor, and that is at the beginning of this I raised the question of the uncertainty we might get into by any such [fol. 2032] procedures as those being discussed and the net of it all was the Special Master's direction that any authorization would be personally signed by Howard R. Hughes.

The Court: Mr. Hughes says, confirms that he made such authorization.

Mr. Sonnett: But it came only after proof of forgery and while that may have been enough to bind him in some—

The Court: Do you come forward with proof that a signature is actually your signature unless it has been challenged? Don't you sign things and everybody assumes it is your signature?

Mr. Sonnett: That proof has not been submitted to your Honor.

The Court: We come back to what the words mean, this acknowledgement that Mr. Hughes confirmed in writing. I assume if you used such language as I indicated before in the supposition, you and Judge Bromley were negotiating a settlement of a case in which you were adversary counsel, that if you wrote to Judge Bromley: "I have in my hand the proposal for settlement of the case confirmed in writing by my client," that Judge Bromley and you would understand [fol. 2033] that to mean that your client had signed such a document. I think that is the common understanding of those words, certainly in the legal profession.

Mr. Sonnett: It is not an understanding of an acknowledgement required, nor the words of acknowledgement required by statute.

The Court: You are going to the question that Mr. Davis represented that he was being extra careful in making sure that they comply with the California statute when in fact they did not. That is something different. We are talking about the common understanding of the words "confirmed in writing," which is what this notary public says that Howard Hughes told him.

Mr. Sonnett: Then I think the words are not quite that clear. There is ambiguity and I think that the record establishes that this piece of paper wasn't drafted by Mr. Hughes. It was drafted by California counsel, who are familiar with the California form, and therefore knew this was a departure from the California form.

The Court: I understand that, Mr. Sonnett. Let us go on to something else.

Mr. Sonnett: I just want to make the point that the [fol. 2034] acknowledgement says that Mr. Hughes further acknowledged to me that he had confirmed such authorization to Mr. Davis in a writing, reading as follows. It doesn't say that it was a writing by him. It would have been very simple to say in a writing which I signed. It doesn't say that. It doesn't say that at all and I think this ambiguity in this is deliberate.

The Court: I will ask that question of Mr. Davis when he gets up.

Mr. Sonnett: So much on the forgery side, and what I regard, your Honor, as a wilful attempt to obstruct the orders of the court.

I think, however, regardless of that, and if the question had never arisen, I think the necessity for TWA to commence its discovery is real and acute.

The Court: What about the suggestion of the Special Master on page 102 of the transcript regarding a Rule 16 definition of issues at this time?

Mr. Sonnett: I think that the suggestion is an excellent one at the right time. I think at this time it would be idiotic.

The Court: Why?

Mr. Sonnett: Because it is impossible, your Honor, it [fol. 2035] seems to me; when we look at the pleadings you will see every allegation of consequence in this complaint substantively is denied by Hughes Tool Company. Any attempt to limit issues is going to produce only weeks and weeks of interminable conversation instead of discovery.

In the second place, I know who some of our witnesses are. I don't know how many there will be. I don't know how many more I am going to need. It may be that after the deposition of Howard Hughes I will put down Hughes will be our witness on ninety-nine per cent of the complaint.

The Court: Aren't you in a position to formulate the ultimate facts for a pre-trial order as contemplated?

Mr. Sonnett: I think we can formulate as far as they can meaningfully at this stage of the case by the denials of the allegations in the complaint. These are allegations are factual, but the issues are clearly drawn there. The question of how much, if any, of those defendants would be willing to stipulate is something that will lead us down the garden path for many, many months.

I am prepared and will be prepared happily to join in [fol. 2036] a pre-trial application, a hearing by your Honor or the Special Master after we have had some discovery. I don't know how much discovery we are going to need. Maybe Mr. Hughes will be enough, maybe he won't be. I can't tell.

I can't emphasize too strongly that he is the one human being that the record plainly demonstrates who does know the whole story. He is the one who pulled the strings.

That is all I have.

The Court: Mr. Davis.

Mr. Davis: Your Honor, I understand that at the request of Mr. Sonnett a transcript of the proceedings before the Special Master was sent to you. Since these arguments are fairly voluminous and a burden on the Court, I have an extract which contains merely the decisions of the Special Master, and if it would assist the Court, I have—

The Court: I have it.

Mr. Davis: What has been going on in this case since this complaint was filed under seal is best described by the remarks of Judge Dawson apparently in a situation which I would have recognized as this one, although it is not [fol. 2037] identified. I found it in the 1958 Stanford University—a statement by Judge Dawson:

> "When the complaint was filed the plaintiffs served notices for the taking of depositions of numerous officers of numerous defendants and for the discovery of books and records of the defendants. There was no way to determine the proper scope of depositions as to respective defendants or how much of the discovery

sought was for legitimate trial purposes or how much was merely for the purpose of making life miserable for the defendants in order to coerce a settlement. To allow such a complaint to stand would have added to the delay and congestion of the court by requiring continuous hearings on the scope of depositions and the proper limitation on discovery. The obvious thing to do was to require the plaintiffs to clarify the issues by stating specifically the nature of the complaint of each plaintiff against each defendant."

Let me say, your Honor, that just as soon as I find the time and certainly before next week, we do intend to submit to your Honor an application in accordance with the suggestion of the Special Master.

[fol. 2038] Now first let me address myself to the constant efforts which have been made by the plaintiff TWA through its counsel to set aside or frustrate the decisions of this court with respect to the priority which was granted to the defendants in effect first by Judge Murphy and denying their application, and specifically by Judge Herlands, more specifically by your Honor when you had occasion to reconsider the matter after we filed our answer and counterclaims and when at the same time you also granted partial discovery relief to the plaintiffs by requiring the defendants to produce all documents in their possession relating to or as called for by the various schedules.

If there have been nine or ten meetings with your Honor in this case—and I don't know how many we have had—I believe that all of them were related to an effort made by the plaintiff to take the deposition of Mr. Hughes out of turn.

The situation in this case—and frankly the basis of the arguments which we had occasion to present before—we never had an opportunity to present fully to your Honor because it was always a decided question, we have a rather unusual situation here.

First of all, the jurisdiction of this court over the subject [fol. 2039] matter of the action is dependent upon the existence of facts tending to indicate that there is a question

to be decided, as to whether or not the conduct of the defendant was in violation of the anti-trust laws.

That is the only basis for the jurisdiction of this court over the subject matter.

The complaint complies with the concept of noticed pleadings and does assert violation of the anti-trust laws—There is no question about that—by conclusions of law, by reference to the statute and by statements that you can find in decided cases but wholly unrelated to identifying the specific count, the occasions, the events, the manner how the defendants are supposed to have violated the anti-trust laws.

In most anti-trust cases, even noticed pleadings do give the defendants some idea as to what it is about, what the plaintiff is complaining about, the distribution system that the defendant has, the acquisition of a competitor and without perhaps knowing all the evidentiary details to support the complaint, in a normal anti-trust action the defendant does know or should know if he is honest, what this is all about.

[fol. 2040] In this situation when TWA is suing its seventy-eight per cent stockholder to require divestiture by the stockholder, we find it more complicated by the fact that the very acquisition was approved by the CAB not only once but—

The Court: Mr. Davis, I hate to interrupt you but you have given me that four times now. I know it by heart.

The question is whether Mr. Hughes should be deposed on September 24th or not.

Mr. Davis: In that connection we come to the conclusion, unusual as it may seem, that notwithstanding the lengthy deposition of Mr. Tillinghast when he was given repeated opportunities to describe or identify what it is the plaintiff claims took place, the conduct which is alleged to have occurred in violation of the anti-trust laws and outside the scope of the CAB authority, not only was I unable to find out what that was but I refer you to the statement made by the Special Master who listened and supervised the deposition of Mr. Tillinghast, to the conclusion of the Special Master which you find at page 101, where Mr. Rankin said:

"I had thought before we completed the testimony of [fol. 2041] Mr. Tillinghast I would be informed about the ultimate facts that the plaintiff was relying upon to support the various allegations of his complaint which are largely conclusions of law but do conform to the requirement of the Federal Rules concerning such complaints. I did not think that with the chief executive officer of the plaintiff being deposed we would reach a point at the conclusion where I would not know the ultimate facts upon which the plaintiff was relying to establish those various allegations in so far as they had a bearing upon the violation of the anti-trust laws but I did find that I was in that position."

And that is the position of the defendant, and quite apart from any obligation that the Court may have to satisfy itself in some manner that it has probable jurisdiction over the subject matter of this action I humbly state that any principle of justice requires that a defendant be aware, be informed in some way as to what it is he is being charged with before he is required to testify.

The position and efforts that the tool company has been making ever since the complaint was filed have been to [fol. 2042] dismiss because the facts do not exist which support the jurisdiction of this court.

What has been developing is that Mr. Hughes, because of a deep personal interest in aviation and because through the tool company he was a seventy-eight per cent stockholder of TWA, he did take an active part or interest in the specifications of the aircraft being acquired, the type of aircraft to be acquired. Whether or not decisions by TWA with respect to the acquisition of aircraft or its financing should be made by a corporate officer or by a seventy-eight per cent stockholder may be a question that could be raised in some forum which has jurisdiction over those kind of actions, not here.

The Court: We have it here in a diversity action of minority stockholders.

Mr. Davis: There are none here.

The Court: It could happen.

Mr. Davis: I meant in this action, ... these are the facts they are talking about.

In spite of the portions that Mr. Sonnett referred to in the record, Mr. Rommel has testified quite clearly that Mr. Hughes actively promoted competition amongst these vari- [fol. 2043] ous manufacturers. This blind answer that I got, which I have been exploring ever since, was that it is true as Mr. Rommel eventually testified to without any prompting on my part, that Mr. Hughes, who was anxious to get as much of a competitive jump against his competitors in the airline industry, when they were working on developments or the possibility of procuring advanced aircraft, he wanted secrecy maintained and then he did not want anyone to even discuss anything with a particular manufacturer.

But the record is replete with evidence that Mr. Hughes and the tool company throughout this entire period first of all was promoting competition amongst the manufacturers, doing everything that he could to maintain a competitive position of TWA.

However that may be, my position basically is that until such time as we do find out what the nature of the claim is which is being asserted by the plaintiff, and how the exemption under the Federal Aviation Act is not applicable, we are not ready to be disposed irrespective of any other consideration.

I am not going to refer, because I am sure that your Honor is more familiar than I am with the deep thought and study which has been given in various seminars by [fol. 2044] judges of this district as well as elsewhere, that it is desirable in the so-called big case that that be done, that plaintiff when they applied to Judge Ryan for assignment of this case to your Honor—

[fol. 2045] The Court: You agree with them, don't you?

Mr. Davis: No, your Honor. I think the case will be disposed of very quickly.

The Court: It seems that anybody who would enter a counterclaim for $365,000,000 must think it is a big case.

Mr. Davis: At that time we didn't have an answer in. In those seminars it is perfectly clear that the consensus of opinion of all concerned is that under noticed pleadings,

even before discovery proceedings of any kind are to be entered into it ought to be developed what the contentions of the parties are. Judge Ryan tried that but counsel for plaintiff in one way or another avoided the opportunity. When he tried that, I believe that is my affidavit, I do recall qute clearly Judge Ryan suggesting to counsel for plaintiff to prepare some kind of statement, he suggested the same thing to me.

Of course I said I can't prepare a statement as to what our position is, what facts we claim until I understand the claim. Otherwise it is going to be an exercise of how much imagination I am capable of.

[fol. 2046] Well, we never succeeded in that matter. I thought at one time that through my motion to dismiss if there had been a requirement that answering affidavits be filed, and whether or not the matter came on for decision, that would force at least some kind of an issue.

The Court: Under our rules, under a motion to dismiss if affidavits are used the Court may consider that as a motion for summary judgment under Rule 56 and require the other side to answer. But as I pointed out to you at this stage of the game this Court guided by the Court of Appeals, thought that motions of this type should not be granted in this type of case at this stage.

Mr. Davis: That is correct, your Honor. Every once in a while we have a situation which I honestly believe exists here that this complaint was drawn without anybody having any facts whatsoever.

I think quite frankly I originally started out with the thought if I depose Mr. Tillinghast, even though had not lived through the period when this alleged misconduct took place, but he was chief executive officer, he decided to file [fol. 2047] the complaint, that the very least we would get out of him is a description or identification of contentions and that is where both I and the Special Master have been disappointed.

Therefore, I quite concur with the views expressed by the Special Master since that has happened, the desirable thing to do now, although I must say parenthetically if I had a little more time to complete the deposition of Mr. Rommel, I don't believe I will be able to complete it in two more

days, I only had about six days, I think I could affirmatively establish facts that negate the possible existence of a violation of the antitrust laws but admittedly it is doing it the hard way.

The Court: Let me ask you this question, Mr. Davis:

You set up a schedule which I think was originally submitted either to Judge Murphy or Judge Herlands before the case was submitted to me for all purposes. You have indicated subsequently before me that that was merely a tentative list and by the date set forth in that list you didn't intend to tie yourself down as to the number of days it would be necessary to take for each witness.

[fol. 2048] Now, if it was even a tentative list as to Mr. Tillinghast it was so tentative as to be practically nonexistent, it meant nothing.

You have now completed Mr. Tillinghast and as I understand you have Leslie and Rommel in some stages of examination.

How many more people do you have and how many more days are you going to need to complete that deposition?

Mr. Davis: Your Honor, may I respectfully refresh your recollection a little more accurately than the way I understand your statement to be?

This schedule so-called was nothing but a tabulation of notices for the taking of depositions which I had made.

The Court: Mr. Davis, I will accept whatever corrections you want to make about my recollection. I want to know about the future.

Mr. Davis: Then let me also say I have not finished with Mr. Tillinghast, I stopped because I was directed by the Court to stop.

The Court: You are finished with Mr. Tillinghast as far as his deposition on your part is concerned. You may be [fol. 2049] able to come back after the plaintiff has had an opportunity for a deposition but as far as your deposition is concerned of the plaintiff, you are finished with Mr. Tillinghast.

Now, I want to know how many more days do you need for the other persons who were noticed?

Mr. Davis: Well, your Honor, without any knowledge of what the answers are that I am going to get it is difficult

to estimate the amount of time except it will be considerable.

The Court: What do you mean by considerable?

Mr. Davis: Let me put it this way, I don't know what the issue is yet.

The Court: You know what questions you are going to ask.

Mr. Davis: I do not.

The Court: You haven't got a general area of inquiry before you go into your deposition?

Mr. Davis: If I could do it from 1939 to date and cover all conceivable events which might have occurred, which have a bearing on the alleged violation of the antitrust laws, it is going to take a long time.

If, however, we do proceed with the suggestion of Mr. Rankin about compelling the plaintiff to identify what it [fol. 2050] is that they claim took place and more particularly who do they know who has any information with respect to what they claim took place, then I assure your Honor I will be able to dispose of those witnesses, to establish the full facts in a very short period of time.

I could then be asked I think, fairly asked the question how long do I expect to take to examine such persons in those areas. It may be that a lot of people that I have noticed are not necessary. The problem that we have, your Honor, is simply of trying to find out what it is—the only person who knows is the plaintiff—I don't know what it is they claim we have done in derogation of CAB orders. I don't know what they claim that we have done or what course of conduct we engaged in.

In one of the allegations of the complaint they said we boycotted some manufacturers. I asked that question of Mr. Leslie, if he ever heard of that.

"No, I never heard of it."

I examined Mr. Rommel and find that the TWA, the defendant dealt with every conceivable manufacturer of aircraft in the United States and abroad. So I don't know what the boycott contention is.

[fol. 2051] I think the solution suggested by Mr. Rankin is the only one, that is recognized by every seminar that I am familiar with and what he is in effect saying now, that

finished with Mr. Tillinghast, we haven't found out what plaintiff is claiming as result of that examination, strange as that may seem to be, and I gave the man every opportunity to tell me whatever he knew or heard of. That is the man who had access to all the officers of TWA. If he doesn't know and won't make the effort to try to find out, who is going to tell me what it is they claim?

Counsel is supposed to make an investigation but I can't examine them under the attorney-client privilege.

Mr. Rankin says in fact if we don't do it he will, let us require the plaintiff to identify what it is they claim. Then several things will happen.

First of all, you will be able to determine whether or not there is a basis for the Court assuming jurisdiction over the subject matter. I don't think that is conferred merely by the filing of a piece of paper. But it is questioned and it seems to me we will have that much more.

Then it seems to me we will now have an identify of [fol. 2052] what area needs to be explored. At that time I will be in a position to answer your question as to how many witnesses I need and if any and how much time.

My strong belief is when plaintiff is forced to do that, there ain't going to be any more lawsuit because there are no facts that he can state and identify.

The Court: You may be able to get past a motion for a dismissal in this court and still not have a lawsuit.

Mr. Davis: I have a counterclaim.

The Court: We haven't reached your $365 million claim. We are dealing with the small $150 million problem now.

In other words, you tell me as of now you have no way of knowing how many more days you will have to conduct your depositions?

Mr. Davis: I cannot make an intelligent estimate that would be informative to the Court absent a disclosure by TWA of the facts or ultimate facts or circumstances or events which they claim constitute a violation of the antitrust laws; that is correct, your Honor.

[fol. 2053] The only information I got out of Mr. Tillinghast was that as to what he claims was a willful and malicious conduct, he referred documents and that issue is ready to be decided by the Court.

The Court: Don't sit down, I am not finished. On pages 99 and 181, the Special Master directed you to advise Mr. Hughes of certain facts. Have you done that?

Mr. Davis: Yes, your Honor. I wrote a letter on Monday and enclosed the pages of the decision of the Special Master and particularly called attention to the fact that if anyone had or if he had any different interpretation he was to advise the Court by Friday.

The Court: I understand if he doesn't so advise the Court, if he doesn't show up there there will be a default entered against Hughes Tool Company. You sent him certain pages. Did you send him page 99 and 181?

Mr. Davis: Maybe I misunderstood the statement. There is no default on Friday.

The Court: On page 99 and 181 the Special Master indicated certain action that you should take with regard to notifying Mr. Hughes, the Special Master's views regard-
[fol. 2054] ing the subpoena.

Mr. Davis: That has been forwarded to Mr. Hughes.

The Court: And that if Mr. Hughes fails to advise the Special Master or the Court by this Friday that he so understands that there will be a waiver, right?

Mr. Davis: That is right.

The Court: And a default judgment would be entered against the Tool Company for $150 million.

Mr. Davis: Not unless he failed to appear when called. That is the only thing I was misunderstanding, I thought you were saying that there would be a default judgment this Friday.

The Court: Now let us get to the forgery question.

Tell me, Mr. Davis, if Mr. Hughes left his home and had gone out before a notary public and took the time to go through this acknowledgment, wouldn't it have taken less time on his part merely to have signed an affidavit to those facts before the notary public and have furnished another sample of his signature for the Court to peruse in connection with this signature affixed to the authorization?

[fol. 2055] Mr. Davis: Let me explain the problem.

The Court: Excuse me just so that the reporter has my sentence.

And to be used to refute the affidavit of Mr. Appel attached to Mr. Sonnett's affidavit submitted to the Court on September 6?

Mr. Davis: The answer is this, your Honor:

When Mr. Hughes called me on Monday at my request he asked me if I wanted him to—what he was going to do was write a letter in his own handwriting and put a half dozen samples of his signatures for all to look at, what do they think I use a machine to sign with or something of the sort. I told him no, I was afraid if he did that all I would be doing would be raising another issue of fact as to whether the second signature was a forgery or not a forgery.

The Court: What did you gain by a notary public's acknowledgment as opposed to an affidavit sworn to before such a notary public?

Mr. Davis: The process I went through was simply this, I wanted to have—let me first say this:

As Mr. Sonnett keeps on saying, trying to keep on the facts, it is a ratification rather than the very document [fol. 2056] which I filed in this court, that is authentic. As far as that issue, there is no question of getting a new authorization, this was my problem of having an acknowledgment with respect to the piece of paper which I had filed. That piece of paper was in my possession, not in California; it was here.

When I was in California to accept service, I came right back because of things I had to do here. When I discussed with California counsel the problem of having an acknowledgment of his signature on a piece of paper that was not physically there for the affiant to say "Yes, this is it."

If we assume contrary to fact that the paper was actually a forgery, how could Mr. Hughes know about it? If you assume Mr. Hughes could know about it it precludes the concept of forgery.

What I told California counsel was to prepare something conforming as closely as possible to the statutory form of acknowledgment in California and to refer to and identify the piece of paper which I received, sign the piece of paper, it could not be there and the man in the usual form says, "I acknowledge the signature on this piece of paper as mine." [fol. 2057] That is what took place.

It seems to me what took place is as clearcut—not a ratification, your Honor, but a confirmation that the authorization that I received was an authorization by Mr. Hughes from Mr. Hughes and that is the only question that was ever before the Court because as the record is quite clear the Special Master did give an alternative which was that either the Tool Company was to answer interrogatories or there be filed by the time those interrogatories were to be answered a writing by Mr. Hughes.

Now, either the writing that I furnished was a writing by Mr. Hughes and before the interrogatories were required to be answered or I got an authorization subsequent to that date.

So far as I was technically concerned, I am not interested in new authority, a new signature. The one important thing was whether or not the paper I received was in fact a paper from Mr. Hughes confirming in writing the authority I asked for. There was no question in my mind, I knew Mr. Hughes was aware of the writing he was receiving because we exchanged communications with respect to it.

The Court: Your affidavit says you spoke to him on [fol. 2058] September 11.

Mr. Davis: Prior to that time, your Honor. My affidavit was prior.

The Court: Did you speak to Mr. Hughes prior to September 11?

Mr. Davis: I did not have a telephone conversation with Mr. Hughes but I was exchanging communications with Mr. Hughes.

The Court: You mean by the central office?

Mr. Davis: Not through that central office, through someone.

The Court: You have no direct telephone conversation at all?

Mr. Davis: That is right but from questions being asked and his wanting to know why it had to be in writing, I knew Mr. Hughes, through the channel I was using to communicate with him ever since I have been in the case, he was aware of my request of why I needed the confirmation

in writing. There is no question about it that this was an authorization by Mr. Hughes, a confirmation in writing. I am not interested in what means he uses to sign or who he uses to sign. I am only interested in something which is binding on Mr. Hughes.

[fol. 2059] The Court: But you have a little problem too, Mr. Davis. You were faced long before this with claims by counsel that they didn't trust Mr. Hughes and therefore wanted it in writing. And I think the Special Master adopted that viewpoint when he gave you the choice of answering interrogatories or producing a writing. So you knew that you had a person for whom you were going to represent to the Court that you were authorized to accept service for; whom neither your adversary nor the Special Master had much faith and that is why they were calling for a written authorization signed by Mr. Hughes.

When you filed with the Court a document purporting to be that and a handwriting expert comes forth and says that is not his signature, aren't you in a peculiar position?

Mr. Davis: I don't think so unless my client fooled me but he didn't. The reference I have in mind—

The Court: But didn't you understand, Mr. Davis, that after the event, after you became advised that neither the Special Master nor your adversary trusted Mr. Hughes, that when you did produce a document which was then [fol. 2060] attacked, as being a forgery, this was again saying you can't trust Mr. Hughes and shouldn't you then have gotten an affidavit sworn by Mr. Hughes before a notary public so that you would have then had a document which was complied with, whether the original authorization had been acknowledged before a notary public, in an independent swearing?

Mr. Davis: If I followed the Court's suggestion I would be technically in default because I received another piece of paper, whether it was an authorization or confirmation, I would have received something past the due date for answering the interrogatories.

The Court: You know, Mr. Davis, that the Court would not have entered a default judgment for $150 million on that basis.

Mr. Davis: I am confident of that but at the same time I am trying to avoid unnecessary arguments by my friends representing TWA.

But, your Honor, there is something you implied in the way you were putting the matter which is not my understanding of what was the rationale with respect to the requirement by the Special Master. Page 45 of the transcript—

[fol. 2061] The Court: You mean Saturday's transcript?

Mr. Davis: Saturday. Where the interpretation or substantially the same language was used at the time the actual requirement was made, page 45, line 7—look at line 4. When I ask someone for written evidence of something it is for the purpose of making it clear there is no misunderstanding as to the nature or scope of the authority. If we are going to start, and I don't believe that this is really the kind of game—how do you identify anybody as anybody, by footprints, thumbprints?

The Court: In writing, handwriting experts have accepted methods of determining whether the purported signature of Mr. Hughes is in fact that of Mr. Hughes.

My only point to you, Mr. Davis, that is in view of the background that neither the Special Master nor your adversary had much faith in Mr. Hughes personally, and because they also wanted to protect you against what he may do and that certainly is implicit in what the Special Master said on page 45, he asked for written evidence,—nobody has in these proceedings and even in your absence on September 6th has said you are not involved in this personally [fol. 2062] but when that evidence is produced and is attacked as being a forgery, with an affidavit from a person who appears to be reputable and I must admit he hasn't been subject to cross-examination, but his qualifications seem quite clear, aren't you then in a position not to furnish this Court with an acknowledgment by a third person which in fact doesn't comply with the California statute because the California statute says acknowledge that he executed the same.

Those words are not in the acknowledgment, Mr. Davis. Shouldn't you then have prepared, not you, I assume Cali-

fornia counsel, shouldn't you have prepared for Mr. Hughes' signature an affidavit just as I assume was prepared for the notary public, the form of the acknowledgment? And since you had to bring Mr. Hughes from wherever he was to this notary public, or maybe the notary public was taken to Mr. Hughes, Mr. Hughes merely had to sign a piece of paper, not even tell a story to the notary public and the time involved would be shorter than was involved in telling the story to a notary public who then had to sign an affidavit? Wouldn't we then have had another signature of Mr. Hughes but this time sworn to before a notary public [fol. 2063] which could have been a perfect refutation of what a handwriting expert may have said in a counterveiling affidavit to me?

Mr. Davis: May I suggest what we would then be discussing, Mr. Sonnet would be standing there and making exactly the same argument and now he says all that proves, your Honor, is that the same person who forged the first letter forged the second and we would have to have a trial at that time and bring in all these notary publics and bring Mr. Hughes.

If I were to produce a man walking into the courtroom and say this is Mr. Hughes he would say prove it.

Let me address myself to what seems to me is the only way to solve these questions of forgery and the question of authorization. There is no issue of fact as to how a thing gets signed. Whether or not a writing is in fact an authorized writing—a man may put an X even though he is capable of writing—the law is perfectly clear as I understand it. The only issue as far as I am concerned that ever existed was either this subpoena—and I don't want any side trials, I want to try this TWA case—and to my mind the only thing needed was an acknowledgment that the [fol. 2064] authority that I received was confirmed in writing; the writing was evidence of the nature and scope of the authority so there could be no question as to what it is.

The purpose of any writing is not to chase over the countryside to determine whether a man can forge his own signature.

The Court: There was an alternative route that would have been much more effective from your point of view.

If you take the trouble of getting an acknowledgment why not get an affidavit?

Mr. Davis: The only problem, I wanted an acknowledgment that the paper which I had here in New York was the one. Let me point out one other thing because I don't think it would be fair to finish without me making this much of an observation. This relates to these efforts to take the deposition of Mr. Hughes next Monday or any time.

TWA has served many notices of deposition for the taking of the deposition of Mr. Hughes. They first took the position he was a managing agent of the Tool Company and the Tool Company could be required to produce him, the notice itself said that.

Then they figured out a better way of annoying and [fol. 2065] harrassing Mr. Hughes and the Tool Company to coerce some kind of settlement without ever disclosing the merits of the lawsuit and they had a big hullabaloo about wanting to locate Mr. Hughes.

Everybody knows there are a lot of people trying to locate Mr. Hughes and a lot of people who would like to coerce some money out of either Mr. Hughes or the Tool Company because of the publicity or notariety that comes when they raise a claim. We know that, we read the newspapers. So then they asked for interrogatories to be answered by the Tool Company, interrupting our discovery proceedings in a technical sense for that purpose and persuaded the Special Master that they needed answers to those interrogatories and publicly disclosing where Mr. Hughes was so they would be able to serve him.

Of course, as a managing agent they didn't need that but no, they need him as a witness. I believe I mentioned that one of the arguments before your Honor we would hear he was a managing agent but that was dropped.

At the time they applied for answers to these interrogatories, your Honor, what did they say to the Special Master? This is not an effort to change the priority for the [fol. 2066] taking of depositions established by this Court. That is the representation that they made.

Now, they want interrogatories answered. In order to induce the Special Master to grant the interrogatories it is

true first they suggested anyone else could serve Mr. Hughes but finally no, Mr. Davis will accept service, it will be satisfactory to us if he is authorized.

Now, I got authority to accept service on his behalf—that is not enough. They want to protect me. It has to be confirmed in writing. I obtained that writing, to be sure the writing I would have preferred would not be as broad.

The Court: The problem was couldn't they even slap you with a summons?

Mr. Davis: Then the reason is perfectly apparent for the trip to California. First they said it is revocable, there was an objection. Did they ever before September 6th question it? No, that came as a surprise here. The only thing that I did was when they served me with another notice for the taking of deposition on August 17 and a subpoena out of the California court, I thought that this [fol. 2067] was a game where they were going to take the position how can we arrange to serve Mr. Davis with a subpoena out in a California court because it requires a person to be in California.

I have been trying to make arrangements to accept service in New York, whatever requirements for doing this be but the Cahill firm wouldn't talk to me. All they would say is that this is not a satisfactory authorization. Why, I don't know.

Apparently if you look at this affidavit filed they had this application for the pilot's license since February of last year. Now they are trying to say which is the forgery. My answer, your Honor, is nothing is a forgery if it is done with the authorization of the person. I am saying to you, sir, the law is perfectly clear, there is no basis or justification to even say forgery unless you believe it is not an authorized act.

I believe the law to be if I asked Mr. Cook right here to sign my name to a letter as is sometimes done—

The Court: How about a check?

Mr. Davis: And as to a check it is not a forgery. Now. [fol. 2068] when all this takes place, what do we find? That appears to be now a reason or justification for saying to you we must have Mr. Hughes.

The Court: I believe I made it clear as to the September 6th hearing these were separate and independent issues and one would have no bearing on the other.

Mr. Davis: I merely refer back to the remarks of Judge Dawson when we have a complaint which does not disclose the facts or allegations. It was filed under seal in order to compel a settlement they are not entitled to. We want to discover the facts and justification for this complaint so our rights can be properly represented.

The Court: Judge Bromley, do you wish to say anything?

Mr. Bromley: With your Honor's permission, my position relates to the additional defendants Metropolitan and Equitable and their respective individuals is that the Special Master was in error in the ruling which he made as your Honor mentioned commencing on page 102.

As I understand him he has in effect said let us put an [fol. 2069] end to these depositions before the direct examination is completed, before there is cross-examination and proceed to what is really a final pretrial.

If one looks at page 103, one will find in paragraph 2 that he contemplates the settling of an order which will define not only the issues as between the plaintiff and defendant but also as between the defendant and the additional defendants prior to the time any depositions are begun, either in defense of or prosecution of the counterclaims.

It seems to me that is a fundamental error for this reason:

The time for that kind of a pretrial has not arrived. What has been done so far as I see it is a preliminary pretrial which was of course proper, which set, charted or assumed to try to chart a course of the discovery and that pretrial order has been in existence and while it hasn't worked out, as your Honor suggested, quite the way it was thought it would, discovery is proceeding.

To interrupt all of that now and come in to try to frame the issues before we, the additional defendants, and before TWA has had any discovery from the central act in both [fol. 2070] controversies, Hughes himself, it seems to be a pure waste of time.

I think because of the length of time consumed by Mr. Davis and although he wouldn't answer your Honor's question, we all know that he has about 20 more witnesses whose examinations he has heretofore noticed, because of the inordinate length of his efforts to perform his discovery functions, I think the time has come when we should have a go at Mr. Hughes and I think Mr. Sonnett should be accorded a prompt opportunity, perhaps after the finishing of Rommel and Leslie, to get a little discovery from a man who knows most about both controversies and give me a chance to cross-examine Mr. Hughes in so far as Mr. Sonnett's examination necessarily impinges upon the issues posed by the counterclaim.

I suppose we all realize that to a certain degree the issues are inextricably wound.

The Court: That is one of the reasons I assume you had the Special Master, to have somebody present who can possibly draw a line one between the other.

Mr. Bromley: That is right and he is alert and has done that very well so far and can be trusted in the future [fol. 2071] to do it well but I say again I think it would be a pure waste of time—I don't think the situation is ripe for the kind of pretrial discovery the Special Master seems to envisage because you cannot do that until you have substantial discovery on both sides.

It doesn't do any good to look at the pleadings, having in mind nothing has been developed by anybody with respect to the issues involving the additional defendants. You cannot look at the pleadings and have a meaningful limitation of issues until you have had substantial discovery from both sides.

Since Mr. Davis has seen fit to take so much time with the first witness I say the time has come for us to have and for Mr. Sonnett and me to have a go at Mr. Hughes.

The Court: Mr. Kaminer.

Mr. Kaminer: May it please your Honor, I agree with Judge Bromley's observation that it is a little too early for the pretrial hearings which the Special Master envisaged. I would like to call to your attention that we have a practical problem here.

We want to get the case going. It is costing so much [fol. 2072] money that it is a disgrace and we are not particularly happy I assure you to have been paid as much as we are and to see this kind of thing going on.

Now, in view of what is happening here we are going to have another interesting issue, namely, whether Mr. Hughes considers himself bound. That could be easily avoided. Your Honor has made all the arguments in questions to Mr. Davis which I planned to make so I don't have to make them. If Mr. Hughes appears on the 24th and answers under oath the question of whether or not he signed that paper—

The Court: That is immaterial.

Mr. Kaminer: Sir?

The Court: I think that is immaterial. If he appears and I direct him to appear, which is now the question I have before me, if he answers whether he signed that paper or not is immaterial. You are going down a collateral line which is unnecessary.

Mr. Kaminer: Secondly, I think the only thing which will bring this case somewhere within sensible proportions is if there is now an examination of Mr. Hughes. You have [fol. 2073] heard the reasons for that and I don't want to repeat them but we think this would have a much more beneficial effect on this case than six months of pretrial.

The Court: Mr. Stewart. You represent Dillon Reed.

Mr. Stewart: I won't repeat what Mr. Kaminer said as to the expense in this case. Dillon Reed was brought in some six months ago or seven months ago as an additional defendant on counterclaims and since that time has been forced to spend tens of thousands of dollars in legal fees and out of pocket expenses for documentary reproduction.

It is still unclear why we were joined in the case. We have no power or ability to grant anything that the Tool Company is asking by way of relief. Dillon Reed merely came up with a plan and made a fee but the point is this, your Honor:

After some months of very active litigation we have had no opportunity to make any discovery of facts underlying the counterclaims against Dillon, Reed. Our investigation shows the claims against us are baseless.

The principal charge against us is that we in some way [fol. 2074] concealed the intent of Mr. Thomas to resign from the Tool Company.

How do you prove that you didn't conceal something? We know the charge is false. But the only way we can prove it is through the examination of Howard Hughes. He knows the charge is false and I believe he will so testify. It may be, your Honor, that after the examination of Howard Hughes. He knows the charge is false and I believe he will so testify. It may be, your Honor, that after the examination of Howard Hughes we may be able to dispose of this matter as far as Dillon Reed is concerned either by stipulation or settlement.

There is, of course, the additional question that even if your Honor were to order that appear for his examination, whether that would only be the trigger for a new round of litigation as to whether he is able to appear or whether this would be injurious to his health. However that may be, I think that Dillon Reed—

The Court: Really we have enough problems now, Mr. Stewart, without some of those. Somebody said there is a question that Mr. Hughes is psychotic and some counsel [fol. 2075] in this transcript before the Special Master got off on that point but I think we have enough of our own problems without looking for any more.

Mr. Sonnett: He is crazy like a fox, your Honor.

Mr. Stewart: I will be faced with the problem of a lapse of time that if we get into a year or more of pretrial no witness' memory is going to be that good any more. But I suggest if for any reason he won't appear or cannot appear, that we find out now and not a year from now or two years from now after we have expended thousands and thousands of dollars in litigation fees.

I respectfully urge your Honor that you grant the TWA motion for the examination of Howard Hughes on the 24th.

The Court: Mr. Davis, do you want to say anything?

Mr. Davis: Your Honor, very briefly, because I really anticipated some of the arguments made here today. I didn't understand that we are here to explore in detail the

desirability of the suggestion made by the Special Master with respect to this pretrial conference he is suggesting. [fol. 2076] I am simply amazed that here we come down to the discovery of TWA and we don't know the basis of the complaint.

Let me read a short paragraph from a statement of Judge Bromley on protracted cases.

The Court: That is not a nice thing to do. I know how Judge Bromley feels. In the motion part counsel argue a decision I handed down last year.

Mr. Davis: I took this out of Judge Bromley's remarks for your Honor:

> "It wasn't very long before I got a real shock. Judge Weinfeld sent for all of us and said, 'I am not going to pass on these interrogatories which have been objected to by the Government. There is no need to do that.'"

I will skip:

> "'Now, I want you gentlemen to tell me your contentions; settle for me the sections of the country which you say competition may be affected and what lines of commerce.'
>
> "That was getting down to cases much too fast for me. I had not begun to think about the issues yet but we had to get busy right away; quick we had to make up our minds what the lines of commerce were, what [fol. 2077] the sections of the country were, that was not an easy task. I should have much preferred to postpone that for many years until all the proof was taken but we had to do it immediately for Judge Weinfeld and we did do it. We submitted our contentions that put the case very quickly into a posture where it was commencing to crystalize."

I don't know what happened to change Judge Bromley's views so drastically.

I also refer—I am sure your Honor is familiar with this—but this was a section in the manual of recommended

procedures for the trial of protracted cases prepared by the United States Judicial Conference in 1958. It reads:

> "One of the most effective devices for bringing the issues to the surface is for the Court well ahead of the date scheduled for the conference to direct counsel for both sides alternately to submit tentative written or oral statements elaborating and clarifying the positions taken in the pleadings. These should not be couched in the verbose language of the complaint but should certainly state ultimate facts as to each legal [fol. 2078] issue. These statements may then become the subject of one or more pretrial conferences at which the Court can discuss with counsel for the parties any points that appear to require further clarification or elaboration. Discovery should thereafter proceed in accordance with the bound as indicated to the clarification and elaboration of the issues as result of these pretrial conferences."

That is what I understand Mr. Rankin is in effect or has in effect suggested. He suggested that we go through that process. Ordinarily the plaintiff is going to be required to identify what it is they claim and that justifies this Court to do anything, much less order someone to testify, and let us satisfy ourselves first as to what it is that TWA is concealing.

They started this action, they are the plaintiff. How can the defendant come and answer questions about anything unless he knows what plaintiff is talking about?

That is what Mr. Rankin is trying to do and that is what all of the learned gentlemen are trying to avoid.

The Court: All right.

[fol. 2079] Mr. Sonnett, do you want to conclude?

Mr. Sonnett: I have only one thing to say, your Honor. I think a reading of the complaint which Mr. Davis seems to have lost somewhere in the recesses of his deep, dark, distant past, a reading of the complaint would indicate there is set forth in detail specifically, ultimate facts relating to the nature of the commerce involved and the con-

spiracy, the acts performed in furtherance of the conspiracy and the effect thereof. There couldn't be any more precise statement of facts.

The Court: I will reserve decision on your motion, Mr. Sonnett, to review the ruling of the Special Master.

(Decision reserved.)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 3884] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 2324

TRANS WORLD ARLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, METROPOLITAN LIFE INSURANCE COMPANY, IRVING TRUST COMPANY, ERNEST R. BREECH, DILLON, READ & CO. INC., BEN-FLEMING SESSEL, JAMES F. OATES, JR., HARRY C. HAGERTY and CHARLES C. TILLINGHAST, JR., Additional Defendants on Counterclaims.

The motion for re-argument is denied.

Toolco has failed to submit to the Court a memorandum indicating the matters or controlling decisions which counsel believes the Court has overlooked. Rule 9(m) of the General Rules of the Southern District. Pursuant to that rule the affidavit of Chester C. Davis sworn to February 13, 1963 is not to be considered part of the record.

The motion for an order referring the stated questions in the notice of motion is denied.

The motion for an order making certain orders of the CAB part of the record is denied. These orders were not part of the submission on the motion to dismiss the complaint nor considered by the Court. Only 6 CAB 153, 12 CAB 192 and Order No. E-161195 were considered by the Court. So ordered.

Charles M. Metzner, U.S.D.J.

[fol. 3886]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-1 TO AFFIDAVIT OF CHESTER C. DAVIS

CIVIL AERONAUTICS BOARD

1182

Application

—of—

HUGHES TOOL COMPANY,
a Delaware Corporation,

for approval by the Civil Aeronautics Board, if such approval is deemed necessary, of control of Transcontinental & Western Air, Inc., an air carrier, under Section 408 of the Civil Aeronautics Act of 1938.

[Stamp—Received—Docket Section—Proceedings Division —Nov. 19, 11:31 A.M., '43—Economic Bureau—Civil Aeronautics Board]

NAME, TITLE AND ADDRESS OF PERSONS TO WHOM COMMUNICATIONS FROM THE BOARD ARE TO BE SENT:

Chadbourne, Wallace, Parke & Whiteside,
25 Broadway,
New York 4, N. Y.

and

Neil S. McCarthy, Esq.,
510 West 6th Street,
Los Angeles 14, Calif.

[fol. 3887]

CIVIL AERONAUTICS BOARD

Application

of

HUGHES TOOL COMPANY

a Delaware corporation, for approval by the Civil Aeronautics Board, if such approval is deemed necessary, of control of Transcontinental & Western Air, Inc., an air carrier, under Section 408 of the Civil Aeronautics Act of 1938.

TO THE HONORABLE, THE CIVIL AERONAUTICS BOARD:

The Applicant, Hughes Tool Company, a Delaware corporation, respectfully submits to the Board the following:

1. The name and address of the Applicant is Hughes Tool Company, Gulf Building, Houston, Texas. All the stock of Hughes Tool Company is owned by Mr. Howard R. Hughes, who is a resident of Houston, Texas, and a citizen of the United States.

2. Hughes Tool Company, as of July 31, 1943, owned 440,050 shares of the capital stock of Transcontinental & Western Air, Inc., being equal to 45.6 percent of a total of 965,083 shares outstanding on that date. Transcontinental & Western Air, Inc., also a Delaware corporation, is an air carrier under the Civil Aeronautics Act of 1938 as amended, holding certificates of convenience and necessity for the transportation of persons, property and mail for routes 2, 36, 37, 38, 44, 58 and 61.

3. Hughes Tool Company is principally engaged in the manufacture of oil field equipment, and is also engaged in the development and manufacture of aircraft through a department operated under the name of "Hughes Aircraft Company", with its principal place of business at Florence

Avenue and Teale, Culver City, California. This department is engaged entirely in the development and manufac-
[fol. 3888] ture of aircraft for the Government or for war purposes.

4. Applicant hereby seeks the approval by the Civil Aeronautics Board, if such approval is deemed necessary, of the control by the Applicant of Transcontinental & Western Air, Inc.

WHEREFORE, the Applicant prays that the Board acting pursuant to Section 408 of the Civil Aeronautics Act of 1938, as amended, enter an order granting the approval sought herein, if such approval is deemed necessary, and, if not necessary, enter an order to that effect; and that the Board grant the Applicant such other and different relief as it may deem proper.

Dated November 15, 1943.

Respectfully submitted,

HUGHES TOOL COMPANY

By /s/ NEIL S. McCARTHY
Vice President

[fol. 3889]

VERIFICATION

STATE OF CALIFORNIA,)
: ss.:
COUNTY OF LOS ANGELES,)

NEIL S. McCARTHY, being duly sworn, deposes and says, that he is Vice President of the Applicant in the above-entitled application; that he has read and is familiar with the contents of the foregoing application; that he intends and desires that in granting or denying the relief requested,

the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the application is true and no such statement is misleading.

/s/ NEIL S. MCCARTHY
Neil S. McCarthy

Subscribed and sworn to before me by the affiant, above named, this 15 day of November, 1943.

/s/ EARL L. BANTE
Notary Public

My Commission Expires October 23, 1944

[fol. 3901]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-3 TO AFFIDAVIT OF CHESTER C. DAVIS

Orders
Serial Number 2619

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 4th day of January, 1944

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval by the Civil Aeronautics Board, if such approval is deemed necessary, of control of Transcontinental & Western Air, Inc., an air carrier, under section 408 of the Civil Aeronautics Act of 1938, as amended.

ORDER GRANTING THE DEPARTMENT OF JUSTICE PERMISSION TO INTERVENE

The Department of Justice, having filed with the Board, pursuant to Rule 4(b) of section 285.4 of the Rules of Practice under Title IV of the Civil Aeronautics Act of 1938, as amended, a petition for leave to intervene in the above-entitled proceeding; and

It appearing to the Board that the petitioner has alleged in its petition matters indicating that it is a person entitled to become a party to such proceeding pursuant to Rule 4(b) of the Rules of Practice,

IT IS ORDERED That the Department of Justice, be and it is granted permission to intervene in the above-entitled proceeding.

By the Civil Aeronautics Board:

/s/ FRED A. TOOMBS
Fred A. Toombs
Secretary

(Seal)

[fol. 3959]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-4 TO AFFIDAVIT OF CHESTER C. DAVIS

[Stamp—Received—Docket Section—Jun 9 1:37 PM '47 —Civil Aeronautics Board]

Before the

CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 1182

In the matter of application of Hughes Tool Company for approval of sale of airplane to Transcontinental and Western Air, Inc.

MOTION

Hughes Tool Company, a Delaware corporation, respectfully moves the Board to enter an order herein which will have the effect of approving the contemplated sale by Hughes Tool Company to TWA, Inc. of one Constellation airplane, Serial No. 1969, which is now owned by Hughes Tool Company, the purchase price of such airplane not to exceed $147,000.00 and which order will also operate as an exception to the conditions upon which the Board's approval of the acquisition of control of TWA, Inc., was granted in

Docket No. 1182 and by the Board's order therein, Serial No. 3210, issued October 17, 1944.

IN SUPPORT OF SUCH MOTION, Hughes Tool Company shows to the Board:

1. It has been advised by the officials of TWA, Inc., that the latter corporation would like to purchase the airplane at the price mentioned above.

2. The airplane was acquired by Hughes Tool Company through a sale of Army surplus.

3. The total investment of Hughes Tool Company in the plane, excluding any interest or storage charges but including cost of repairs and reconditioning, is $147,000.00.

4. The plane could in all probability be sold for a sum substantially larger than that above-mentioned and it is substantially identical with another Constellation airplane for which TWA recently paid $360,000.00.

Respectfully submitted,

HUGHES TOOL COMPANY
By /s/ T. A. SLACK
Attorney

THE STATE OF TEXAS)
COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, personally appeared T. A. SLACK, to me well known to be the person who has affixed his signature to the foregoing instrument and after being by me duly sworn deposes and says that the facts set forth in the foregoing motion are true and correct to the best of his knowledge and belief.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 6th day of June, A. D. 1947.

/s/ BEATRICE FOLLIS
Notary Public in and for
Harris County, Texas.

[fol. 3960] CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 1182

In the matter of application of Hughes Tool Company for approval of sale of radar units to Transcontinental and Western Air, Inc.

MOTION

Hughes Tool Company, a Delaware Corporation, respectfuly moves the Board to enter an order herein which will have the effect of modifying the order entered by the Board on October 17, 1944, in Docket No. 1182, which approved acquisition of control of Transcontinental and Western Air, Inc. (hereinafter called "TWA") by Hughes Tool Company subject to certain conditions. The Board is hereby requested to modify the conditions contained in the order just mentioned so as to permit Hughes Tool Company to sell to TWA at cost to Hughes Tool Company however many of the devices known as "Hughes Airline Radar Units" TWA may wish to purchase from Hughes Tool Company.

IN SUPPORT OF SUCH MOTION, Hughes Tool Company shows to the Board:

1. The device which is the subject of this application consists of a "radar" unit designed to be installed in an airplane and which will indicate by light or audible alarm, or both, the presence of any object within a certain distance and general direction from the airplane, such distance being subject to control by manual regulation of the instrument.

2. It has been demonstrated that the Hughes Airline Radar Unit will add materially to the safety of flight under instrument conditions.

3. Commercial airlines other than TWA have ordered these units for use in their airplanes.

[Stamp—Received—Docket Section—Oct 3 11:43 AM '47 —Civil Aeronautics Board]

4. Officials of TWA have stated that TWA wishes to acquire a substantial number of these devices for use on its planes.

5. The engineering and construction cost of the devices have not been ascertained with certainty but it appears with reasonable certainty that the cost to Hughes Tool Company of each unit designed for a 24 volt electrical system will be less than $160.00 and the cost of each unit designed for a 12 volt electrical system will be less than $220.00.

6. The Civil Aeronautics Board and the Office of the Administrator of Civil Aeronautics are familiar with this particular device and its performance.

7. For the information of the Board, we attach hereto the following:

(a) Breakdown in figures showing estimated cost to Hughes Tool Company of manufacturing these units;

(b) Affidavit of LaMotte T. Cohu, President of TWA, with respect to TWA's desire to purchase this equipment.

Applicant hereby suggests to the Board that it enter its order of modification herein upon the conditions:

(1) That the sale price of the equipment to TWA shall be not in excess of the cost to Hughes Tool Company;

(2) That all sales shall be subject to approval of the [fol. 3961] device by the Administrator of Civil Aeronautics.

Respectfully submitted,

HUGHES TOOL COMPANY
By /s/ T. A. SLACK
Its Attorney

THE STATE OF TEXAS)
COUNTY OF HARRIS)

Before me the undersigned authority, on this day personally appeared T. A. SLACK, to me well known to be the person who has affixed his signature to the foregoing instrument, and after being by me duly sworn, deposes and says that the facts set forth in the foregoing motion are true and correct to the best of his knowledge and belief.

Given under my hand and seal of office this 30th day of September, A. D. 1947.

/s/ FAE W. CROPPER
Notary Public in and for
Harris County, Texas.

[fol. 3962]

HUGHES AIRCRAFT COMPANY

DIVISION HUGHES TOOL COMPANY

INTERDEPARTMENTAL CORRESPONDENCE

To: Mr. F. M. McDonnell CC:

DATE: July 8, 1947

SUBJECT: HUGHES RADAR OBSTRUCTION INDICATOR

FROM: Roy H. Sherwood

Attached hereto you will find four copies of Mr. Osborne's memo dated July 7, 1947, setting forth the present status of the subject project.

The following sets forth total cost, including all overhead, to June 29, 1947, inclusive, estimated cost of completing the program and the total estimated cost of the entire project covering 2000 units:

	Costs to 6/29/47	Estimated Cost to Complete	Total Estimated Cost
Engineering	$ 12,154.69	$ 40,345.31	$ 52,500.00
Tooling	1,705.47	1,174.53	2,880.00
Production: Labor and Material	43,926.68	132,793.32	176,720.00
Demonstration	8,588.03	1,411.97	10,000.00
T.W.A. Advertising (H.A.C. Portion)		50,000.00	50,000.00
Contingencies		16,000.00	16,000.00
Total	$ 66,374.87	$ 241,725.13	$ 308,100.00
Estimated additional cost of converting 500 Units for 12 volt electrical systems		32,250.00	32,250.00
Total Estimated Cost	$ 66,374.87	$ 273,975.13	$ 340,350.00

Estimated cost per unit for 24 volt electrical system $ 154.05

Estimated cost per unit for 12 volt electrical system $ 218.55

The total estimated cost amounting to $340,350.00 was computed by our Estimator, Mr. Frank Clark. It is the consensus of opinion of all concerned that the estimate, based on available information, is fair and reasonable.

The estimate only covers the present developed type with 500 foot and 2000 foot range indicators only. Additional estimates will be necessary covering the cost of adding a 1000 foot indicator, if it is decided to add this third range.

/s/ Roy Sherwood

RHS:js
Attachments

[fol. 3963]
State of Missouri)
County of Jackson)

I, the undersigned, LaMotte T. Cohu, do hereby make this statement under oath for the information of the Civil Aeronautics Board in connection with an application by Hughes Tool Company for approval of sale of radar units to Transcontinental & Western Air, Inc.

I am President of Transcontinental & Western Air, Inc. (hereinafter referred to as T. W. A.), having been elected to that office on March 24 of this year. I am thoroughly familiar with the device known as the "Hughes Air Line Radar", and it is my judgment that it would be to the benefit of T. W. A. and as well to the benefit of the public who may travel upon T. W. A. passenger planes if this device is made standard equipment on all of the planes of T. W. A. which are used in passenger service. I think that the device will materially add to the safety of air transportation, and that the cost of it, in proportion to its benefits, is quite insignificant. This opinion of mine is shared by the responsible officials in the operating and mechanical departments of T. W. A.

I am not a stockholder or an officer or employee of Hughes Tool Company, and I believe there is no possibility that my judgment as set forth above has been influenced unduly by any person who may be interested in Hughes Tool Company.

/s/ LaMotte T. Cohu
LaMotte T. Cohu

Subscribed and sworn to before me, the undersigned authority, on this the 26th day of September, 1947.

/s/ Patricia L. Harris
Notary Public in and for
Jackson County, Missouri.
My Commission Expires
May 13, 1950

[fol. 3964]

[Stamp—Received—Docket Section—Oct 22 2:26 PM '48 —Civil Aeronautics Board]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANSCONTINENTAL & WESTERN AIR, INC.

MOTION FOR APPROVAL OF PURCHASE OF TWO CONSTELLATION AIRPLANES

Communications with respect to this document should be sent to:

Warren Lee Pierson,
Chairman of the Board of Directors,
Transcontinental & Western Air, Inc.,
630 Fifth Avenue,
New York 20, N. Y.

and

Chadbourne, Wallace, Parke & Whiteside,
Attorneys for
Transcontinental & Western Air, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 3965]

Before the

CIVIL AERONAUTICS BOARD

Washington, D. C.

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANSCONTINENTAL & WESTERN AIR, INC.

MOTION FOR APPROVAL OF PURCHASE OF TWO CONSTELLATION AIRPLANES

Transcontinental & Western Air, Inc., a Delaware corporation (herein referred to as "TWA"), respectfully moves the Board to enter an order herein approving the contemplated sale by Hughes Tool Company to TWA of two Lockheed Constellation airplanes bearing Manufacturer's Serial Nos. 049-1969 and 049-1970, which Hughes Tool Company now owns, and that the Board modify its order approving the acquisition by Hughes Tool Company of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended by Order Serial No. 4437, issued January 26, 1946 and Order Serial No. E 922, issued October 29, 1947, so as to permit the sale of such aircraft.

IN SUPPORT OF SUCH MOTION, TWA shows to the Board:

1. By agreement dated as of October 1, 1948, a copy of which is attached hereto as "Exhibit 1", Hughes Tool Company has agreed to sell and TWA has agreed to purchase, subject to the approval herein requested and to the other conditions set forth in such agreement, the two Constellation airplanes above referred to at the cost of said airplanes to Hughes Tool Company, which cost is not to exceed an

aggregate price of $1,090,000, all as more particularly set forth in such agreement.

[fol. 3966] 2. Hughes Tool Company acquired airplane Serial No. 049-1969 from the United States Government through TWA pursuant to rights reserved by TWA and Hughes Tool Company in connection with the sale by TWA of such airplane to the Army Air Force during the War. Hughes Tool Company purchased airplane Serial No. 049-1970 from Lockheed Aircraft Corporation. Airplane No. 049-1970 has been, and No. 049-1969 is in the process of being converted by Lockheed Aircraft Corporation from military to commercial versions including complete overhaul and modification to meet current CAA requirements in the air transport category.

In support of the foregoing, the affidavit of Frank M. McDonnell is attached hereto as "Exhibit 2" and by this reference made a part hereof.

3. Said airplanes are to be used by TWA on a no-charge basis pending action of the Board on this motion, in accordance with the Board's letter of October 6, 1948, a copy of which is attached hereto as "Exhibit 3".

4. As will more particularly appear from the affidavit of Warren Lee Pierson attached hereto as "Exhibit 4" and by this reference made a part hereof, said airplanes are required by TWA for use in its domestic operations; the manufacture of airplanes of this model has been discontinued; TWA has recently purchased twelve Lockheed Model 749 Constellation airplanes for a price of approximately $910,000 per airplane; and the price to be paid by TWA to Hughes Tool Company for said airplanes is substantially below the price paid by TWA for airplanes of the same model purchased by it from Lockheed Aircraft Corporation in May of 1947.

WHEREFORE, TWA respectfully moves the Board to enter an order herein approving the sale by Hughes Tool Company to TWA of two Lockheed Constellation airplanes as

hereinbefore set forth, and for such other and further [fol. 3967] relief as may be appropriate.

Respectfully submitted,

TRANSCONTINENTAL & WESTERN AIR, INC.

By /s/ WARREN LEE PIERSON
Chairman of the Board

Chadbourne, Wallace, Parke & Whiteside,
25 Broadway,
New York 4, N. Y.

[fol. 3968]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WARREN LEE PIERSON, being duly sworn, deposes and says that he is Chairman of the Board of TRANSCONTINENTAL & WESTERN AIR, INC.; that he has read and is familiar with the contents of the foregoing motion and the exhibits attached thereto; that he intends and desires that in granting or denying the relief requested, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the motion is true and no such statement is misleading.

/s/ WARREN LEE PIERSON

Subscribed and sworn to
before me this 21st day
of October, 1948.

/s/ DOROTHEA A. O'BRIEN
Notary Public

Dorothea A. O'Brien
Notary Public in the State of New York
Residing in Kings County
Kings Co. Clk's No. 111, Reg. No. 101-O-9
N. Y. Co. Clk's No. 41, Reg. No. 173-O-9
Commission expires March 30, 1949

[fol. 3969] Exhibit "1"

Sales Agreement

This agreement, made and executed in duplicate as of the first day of October, 1948, by and between Hughes Tool Company, a Delaware corporation (hereinafter sometimes called "Seller"), with its principal place of business at Houston, Texas, and Transcontinental & Western Air, Inc., a Delaware corporation (hereinafter sometimes called "Buyer"), with its principal place of business at Kansas City, Missouri:

Witnesseth:

Whereas, Seller desires to sell and Buyer desires to purchase two Lockheed Model 49 Constellation type airplanes which Seller now owns or has contracted to purchase;

Now therefore, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Seller shall sell and deliver to Buyer and Buyer shall purchase and accept delivery of two Lockheed Model 49 airplanes bearing Lockheed Serial Nos. 049-1969 and 049-1970. At the time of delivery said airplanes shall physically conform to the airplane description contained in the Lockheed Report No. B-5470-7 dated May 21, 1948, as modified by Contracts Nos. LD-45 and LD-46 dated February 3, 1948, between Seller and Lockheed Aircraft Corporation; copies of said Report and Contracts have been examined by and are in the possession of Buyer. It is understood that Seller makes no warranties whatsoever regarding said airplanes but that Buyer accepts in lieu thereof the obligations of Lockheed Aircraft Corporation as set forth in said Contracts, which obligations Lockheed Aircraft Corporation has agreed shall run in favor of Buyer as evidenced by instrument attached hereto, marked "Exhibit A", and hereby made a part hereof, and Seller hereby assigns to Buyer Seller's rights under said contracts after aircraft delivery thereunder.

[fol. 3970] 2. Each of said airplanes shall be delivered to Buyer by Seller and Buyer shall accept delivery thereof at Los Angeles Municipal Airport, or such other place as may be mutually agreed upon, as soon as is practicable after the airplanes have been completed by Lockheed Aircraft Corporation and approval to this sale is granted by the Civil Aeronautics Board.

3. The sales price of each airplane shall be the cost thereof to Hughes Tool Company and for the purposes of this agreement shall be established at FIVE HUNDRED FORTY THOUSAND DOLLARS ($540,000.00), subject to the following provision: at such time as the total cost of both airplanes is finally determined, based on the books and records of the Hughes Aircraft Company Division of Hughes Tool Company, any variation from said established price shall be promptly paid by the Buyer or refunded by the Seller, as the case may be, provided that in no event shall said sales price exceed an average of FIVE HUNDRED FORTY-FIVE THOUSAND DOLLARS ($545,000.00) per airplane. Payment thereof shall be made by Buyer to Seller in consecutive monthly installments in the amount of NINE THOUSAND DOLLARS ($9,000.00) or more. The first of such payments relating to each airplane shall be made at the time of the delivery of such airplane, and one of the remaining payments shall be made each calendar month thereafter, in accordance with the promissory note hereinafter provided for, until the whole of the sales price shall have been paid. Buyer's obligation to make the payments, after the first payment, relating to each of said airplanes, shall be evidenced by a negotiable installment promissory note dated, at Los Angeles, California, as of the date of the delivery of such airplane, payable to Seller or order by Buyer and bearing interest on the principal thereof at the rate of Two Per Cent (2%) per annum, payable monthly. Such note shall provide for the payment of the principal in consecutive monthly payments of NINE THOUSAND DOLLARS ($9,000.00) or more, commencing one month after the [fol. 3971] delivery of such airplane. Such promissory note shall be executed and delivered by Buyer to Seller at the time of the delivery of such airplane, and shall be in the

form of "Exhibit B", attached hereto, and by this reference made a part hereof. The promissory note relating to each airplane shall be secured by a Chattel Mortgage, covering such airplane, which shall be a first lien on such airplane and shall be substantially in the form of the Chattel Mortgage entered into by and between Buyer and Lockheed Aircraft Corporation as of May 12, 1947, and the Supplemental Chattel Mortgage dated May 15, 1947, both relating to airplanes sold to Buyer under the terms of a certain Sales Agreement, designated as Contract No. LD-33, dated March 27, 1947, between Buyer and Lockheed Aircraft Corporation. Upon the happening of any one or more of the following events, namely:

(a) The breach on the part of the Buyer of any covenant or agreement of the Chattel Mortgage to be observed, done or performed by the Buyer;

(b) The occurrence of any event of default as provided in the Chattel Mortgage;

(c) Failure to make payment when due, and within five (5) days after demand in writing is made for payment, of the principal or of any interest of any promissory note hereinbefore referred to;

then the unpaid principal and accrued interest of both of such promissory notes shall become immediately due and payable without demand and without notice, and Buyer agrees forthwith to pay the same; or

(d) If Buyer shall divest itself, or be divested, in whatsoever manner, of title to either such airplane; or

(e) If either such airplane is lost, destroyed or damaged beyond repair;

then the unpaid principal, and accrued interest thereon, of the promissory note relating to such airplane shall become immediately due and payable without demand or notice and Buyer agrees forthwith to pay the same. Each [fol. 3972] successive holder of each such promissory note

shall have the benefit of, and may enforce the rights contained in, the foregoing provisions relating to the acceleration of maturity of such promissory note. The provisions hereof and any contained in the applicable Chattel Mortgage relating to the acceleration of the maturity of such note shall be deemed to be cumulative and not exclusive and the existence of such provisions in either instrument shall not preclude the exercise of any right set forth in the other. All payments made pursuant to this agreement shall be made in lawful money of the United States of America or by check drawn upon, and duly certified by, a member bank of the United States Federal Reserve System and payable in such money, and, unless otherwise provided, at Seller's office in Houston, Texas.

4. Buyer shall furnish Seller forthwith, and from time to time thereafter at reasonable intervals and in any event upon request at such time or times as Seller shall be engaged in offering to sell or discount either or both of said promissory notes to a bank or other prospective purchaser, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower or prospective borrower therefrom. Seller shall hold such information in confidence except to the extent it reasonably deems it necessary to divulge the same to such bank or prospective purchaser in connection with the sale or discount of such note or notes.

5. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the airplanes or in connection with the modification thereof by Lockheed Aircraft Corporation under said Contracts LD-45 and LD-46, then in addition to the sales price provided for in section 3, Buyer shall pay to Seller the amount thereof, upon demand.

6. This agreement shall not be effective for any purpose [fol. 3973] unless and until the Buyer has secured all consents and approvals to the extent required under or by reason of any prior commitment in order to avoid Buyer's

execution of this instrument as constituting a default thereunder.

7. This agreement is entered into subject to the approval of the sale herein provided for by the Civil Aeronautics Board and in the event such approval is not granted within sixty (60) days from the date hereof, this agreement shall be deemed to be ineffective for any purpose.

8. Upon the securing of all the consents and approvals hereinbefore referred to, this agreement shall become binding and effective as of the day and year first above written.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Agreement as of the day and year first above written.

HUGHES TOOL COMPANY

By NOAH DIETRICH
Executive Vice President

TRANSCONTINENTAL & WESTERN AIR, INC.

By WARREN LEE PIERSON
Chairman of the Board

[fol. 3974]

"EXHIBIT A"

HUGHES TOOL COMPANY

Florence Ave. at Teale St.
Culver City, California

October 11, 1948
SL/38554

Lockheed Aircraft Corporation
Burbank, California

Attention: Mr. P. K. Yost, Jr.
Domestic Sales Manager

Re: Constellation Airplanes Nos. 1969 and 1970

Gentlemen:

As you know, subject to C.A.B. approval, we intend to transfer title to the above planes to T.W.A. They have asked for your confirmation of the following:

"Lockheed Aircraft Corporation acknowledges that Hughes Tool Company intends to sell and deliver to Transcontinental & Western Air, Inc., Constellation aircraft Serial Nos. 1969 and 1970, such sale carrying with it assignment to Transcontinental & Western Air, Inc. of all the rights of Hughes Tool Company after delivery of said Constellation aircraft from Lockheed Aircraft Corporation to Hughes Tool Company under Contracts Nos. LD-45 and LD-46. Provided that said sale and delivery does not, and for so long as the same does not, constitute a default under the Indenture dated as of December 1, 1945, as amended, between Transcontinental & Western Air, Inc. and The Commercial National Bank and Trust Company of New York, or under the Credit Agreement, dated as of March 25, 1948, between Bankers Trust Company, as Agent, Transcontinental & Western Air, Inc. and others, or the Lockheed Agreement, dated as of March 25, 1948, between Lockheed Aircraft Corporation, Bankers Trust Company, as Agent, and others, or under the Chattel Mortgage dated as of March 25, 1948, or any mortgage

of chattels supplemental thereto, between Transcontinental & Western Air, Inc., Mortgagor, and Bankers Trust Company, as Trustee, Mortgagee, Lockheed Aircraft Corporation hereby agrees that all of its obligations to Hughes Tool Company under said contracts shall be fulfilled for the benefit of Transcontinental & Western Air, Inc. provided nothing herein shall relieve Hughes Tool Company from performing its obligations to Lockheed Aircraft Corporation under said contracts and that the rights of Transcontinental & Western Air, Inc. shall be limited and affected by all agreements, covenants, actions, and consents of Hughes Tool Company with respect to said contracts."

We will appreciate your executing this enclosed carbon copy of this letter and its return to us for this purpose, at your earliest convenience.

Very truly yours,

HUGHES TOOL COMPANY

By HOWARD P. HALL
Howard P. Hall

HPH:pk

Confirmed:
Lockheed Aircraft Corporation
By CARL B. SQUIER

[fol. 3975]

"EXHIBIT B"

Airplane Serial No. .....

PROMISSORY NOTE

$..... Los Angeles, Calif., ... 1948

For value received TRANSCONTINENTAL & WESTERN AIR, INC., a Delaware corporation, promises to pay to HUGHES TOOL COMPANY, a Delaware corporation, OR ORDER, at the principal office of said Hughes Tool

Company, 2223 Gulf Building, Houston, Texas, in instalments, as herein stated, the principal sum of .... Dollars, with interest thereon from the date hereof on unpaid principal at the rate of ..... per cent (....%) per annum, payable monthly.

Principal shall be payable in monthly instalments of ..... Dollars ($.....), or more on the ..... day of each calendar month beginning with the month of ....., 194.., and continuing until said principal has been paid in full.

Should interest not be so paid it shall thereafter bear like interest as principal. Should interest not be so paid when due and thereafter within five (5) days after written demand therefor or should any instalment of principal be not paid when due and thereafter within five (5) days after written demand therefor, then, and in either case, the unpaid balance of principal with any accrued interest shall become immediately due and payable at the option of the holder of this note.

Principal and interest shall be payable in lawful money of the United States of America. If action be instituted on this note, the undersigned promises to pay such sum as the Court may fix as attorney's fees.

This note is issued pursuant to the terms of a certain Sales Agreement dated October 1, 1948, between the undersigned maker and the above named payee, and is secured by a Chattel Mortgage dated ....., 1948, covering the Constellation type airplane bearing Manufacturer's Serial No. 049....., which provide, among other things, for acceleration of maturity upon the happening of certain events.

TRANSCONTINENTAL & WESTERN AIR, INC.

By .....
Vice President

(Corporate Seal)

By .....
Secretary

[fol. 3976]

Exhibit "2"

AFFIDAVIT

COUNTY OF LOS ANGELES)
) ss.
STATE OF CALIFORNIA)

Frank M. McDonnell, being first duly sworn, deposes and says that he is Treasurer of the Hughes Tool Company, a Delaware corporation, and makes this affidavit for and on behalf of said corporation:

I. That Lockheed Constellation Airplane, Serial Number 049-1969, was acquired from Transcontinental and Western Air, Inc., as Army surplus pursuant to an agreement between Hughes Tool Company and Transcontinental and Western Air, Inc., in connection with the sale by the latter of such airplane to the Army Air Force during World War II, and a bill of sale therefor was received by said corporation under date of July 1, 1946; that said airplane has not been flown since its acquisition but has remained in storage at Lockheed Air Terminal at Burbank, California, until February 3, 1948, and subsequent thereto in the shop of Lockheed Aircraft Corporation for modification and overhaul; that said airplane is being modified by Lockheed Aircraft Corporation to meet its Specification Report No. B-5470-7, dated May 21, 1948, including current CAA requirements in the air transport category; that the log book of said airplane indicates a total time for airframe and engines of 264.5 hours prior to July 1, 1946; that said airplane will be licensed and ready for flight on or about November 30, 1948.

II. That by contractual agreement with Lockheed Aircraft Corporation, dated February 3, 1948, as amended, the Hughes Tool Company agreed to purchase Lockheed Constellation Airplane, Serial No. 049-1970; that said airplane has been modified by Lockheed Aircraft Corporation to meet its Specification Report No. B-5470-7, dated May 21, 1948, including current CAA requirements in the air

transport category; that the log book of said airplane indi-
[fol. 3977] cates a total time for airframe and engines of 279.4 hours prior to February 3, 1948; that said airplane was licensed and delivered to Hughes Tool Company on October 1, 1948.

III. That based on the books and records of its Hughes Aircraft Company Division as of September 26, 1948, and contractual commitments, the total cost to Hughes Tool Company of said airplanes will not be less than $1,080,000.00.

/s/ Frank M. McDonnell
Frank M. McDonnell

Subscribed and sworn to before me, the undersigned, a Notary Public in and for the County of Los Angeles, State of California, this 13th day of October, 1948.

/s/ Arthur J. McLain
Notary Public in and for said County and State.
My Commission Expires Dec. 8, 1950

[fol. 3978]

Exhibit "3"

CIVIL AERONAUTICS BOARD

Washington

October 6, 1948

Mr. Warren Lee Pierson
Chairman, Board of Directors,
Transcontinental & Western Air, Inc.,
101 West 11th Street,
Kansas City 6, Missouri

Re: TWA-Hughes Tool Company Requested Approval of two Constellations owned by Hughes Tool Company

Dear Mr. Pierson:

In reply to your telegram of September 30, 1948, requesting approval for the temporary use by TWA on a no charge basis, of two Constellation airplanes owned by Hughes Tool Company for charter flights during the forthcoming World Series, you are advised that the loan of the aircraft on such a basis does not constitute a transaction requiring Board approval.

It is assumed, of course, that the use of these aircraft will be consistent with the Civil Aeronautics Act of 1938, as amended, and the applicable regulations thereunder.

Sincerely yours,

(s) JOSEPH J. O'CONNELL, JR.
Joseph J. O'Connell, Jr.
Chairman

[fol. 3979]

Exhibit "4"

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WARREN LEE PIERSON, being first duly sworn, deposes and says:

That he is Chairman of the Board of Directors of Transcontinental & Western Air, Inc., a Delaware corporation, hereinafter referred to as "TWA", and makes this affidavit for and on behalf of said corporation.

1. That TWA desires to acquire Lockheed Constellation airplanes Serial Nos. 049-1969 and 049-1970 from Hughes Tool Company in order to add them to TWA's general fleet of similar Model 049 Constellations performing air transport service in the United States.

2. That the manufacture of Model 049 Constellations has been discontinued by Lockheed Aircraft Corporation.

3. That TWA has recently purchased twelve Lockheed Model 749 Constellation airplanes from Lockheed Aircraft Corporation for an average price of approximately $910,000 per airplane, or substantially in excess of the price to be paid by TWA for the Model 049 Constellation airplanes to be acquired from Hughes Tool Company.

4. That the purchase price of Model 049 Constellation aircraft acquired by TWA from Lockheed Aircraft Corporation in May 1947 was approximately $718,000 per plane, or substantially in excess of the price to be paid by TWA for the airplanes to be acquired from Hughes Tool Company of the same model.

5. That acquisition of Constellation airplanes Serial Nos. 049-1969 and 049-1970 will be advantageous to TWA for the following reasons:

[fol. 3980] A. Addition of two Constellations to the present TWA Constellation fleet will permit increased Constellation service and increased revenue mileage over the service and revenue mileage which can be achieved with TWA's present Constellation fleet.

B. Because Constellations 049-1969 and 049-1970 are of the same model as, and have been modified to conform substantially with, TWA's present domestic Constellation fleet, such increased service and revenue can be achieved with these two aircraft with little or no increase in overhead expenses, maintenance equipment or spare parts inventories.

C. Acquisition of Constellations 049-1969 and 049-1970 will permit such increased service and revenue mileage immediately, because these two aircraft will have been modified before delivery so as to be substantially standard with the remainder of TWA's domestic Constellation fleet.

D. Constellations 049-1969 and 049-1970 are available for purchase on credit terms, permitting the aircraft to be used to produce revenue before TWA is required to make large cash outlays against the purchase price.

E. Constellations 049-1969 and 049-1970 are available for immediate operation, with practically no risk of substantial delay or immediate further modification, during the winter season when their high altitude performance makes them preferable to the DC-3, the only practicable alternative aircraft for TWA's domestic routes under existing circumstances.

F. TWA deems the acquisition of Constellations 049-1969 and 049-1970 desirable to improve further TWA's service to the public, and necessary to increase TWA's gross revenues, improve TWA's cash position

in the immediate future, and enhance the possibility of TWA's effecting net earnings in the future.

/s/ WARREN LEE PIERSON.

Subscribed and sworn to before me this 21st day of October, 1948.

/s/ DOROTHEA A. O'BRIEN
Dorothea A. O'Brien
Notary Public in the State of New York
Residing in Kings County
Kings Co. Clk's No. 111, Reg. No. 101-O-9
N. Y. Co. Clk's No. 41, Reg. No. 173-O-9
Commission expires March 30, 1949

[fol. 3981]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANSCONTINENTAL & WESTERN AIR, INC.

MOTION FOR APPROVAL OF PURCHASE OF SIX CONSTELLATION AIRPLANES

Communications with respect to this document should be sent to:

Warren Lee Pierson,
Chairman of the Board of Directors,
Transcontinental & Western Air, Inc.,
630 Fifth Avenue,
New York 20, N. Y.

and

Chadbourne, Wallace, Parke & Whiteside,
Attorneys for
Transcontinental & Western Air, Inc.,
25 Broadway,
New York 4, N. Y.

[Stamp—Received—Docket Section—Feb 28 2:58 PM '50 —Civil Aeronautics Board]

[fol. 3982]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANSCONTINENTAL & WESTERN AIR, INC.

MOTION FOR APPROVAL OF PURCHASE OF SIX CONSTELLATION AIRPLANES

Transcontinental & Western Air, Inc., a Delaware corporation (herein referred to as "TWA"), respectfully moves the Board to enter an order herein approving the contemplated sale by Hughes Tool Company to TWA of six Lockheed Constellation Model 049 airplanes bearing Manufacturer's Serial Nos. 2072, 2073, 2074, 2075, 2070 and 2084, which Hughes Tool Company now owns or has contracted to purchase and that the Board modify its order approving the acquisition by Hughes Tool Company of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended by Order Serial No. 4437, issued January 26, 1946, Order Serial No. E 922, issued October 29, 1947, and Order Serial No. E-2404, issued January 27, 1949, so as to permit the sale of such aircraft.

IN SUPPORT OF SUCH MOTION, TWA shows to the Board:

1. By agreement dated as of February 2, 1950, a copy of which is attached hereto as "Exhibit 1", Hughes Tool Company has agreed to sell, on a conditional sale basis, [fol. 3983] and TWA has agreed to purchase, subject to the approval herein requested and to the other conditions set forth in such agreement, the six Constellation airplanes above referred to at the cost of said airplanes to Hughes

Tool Company less, in the case of one airplane to be used temporarily by Hughes Tool Company, depreciation at the rate of 1/84 per month, all as more particularly set forth in such agreement.

2. These airplanes are being acquired by Hughes Tool Company, four from Air France and two from Lockheed Aircraft Corporation, to assist TWA in increasing its fleet of aircraft. TWA had been endeavoring to purchase additional Constellation airplanes when the availability of these six aircraft was discovered by Hughes Tool Company while it was investigating the possibility of obtaining the use of one Constellation airplane for temporary use for test purposes. Hughes Tool Company immediately advised TWA that these six airplanes were available.

3. The contracts for the purchase of these airplanes were entered into directly by Hughes Tool Company to assist TWA in acquiring such airplanes. It is impossible for TWA to acquire aircraft without obtaining prior consents or waivers under various financial agreements it has entered into in the past. The Indenture of December 1, 1945, as amended, between TWA and The Commercial National Bank and Trust Company of New York, as Trustee, covering the Debentures held by The Equitable Life Assurance Society of the United States, prohibits, under present conditions, the acquisition by TWA of any new aircraft without the consent of the holders of the Debentures. The Chattel Mortgage of August 4, 1949 from TWA to Mellon National Bank and Trust Company, as Trustee, prohibits [fol. 3984] borrowings, mortgaging of aircraft, or acquisition of aircraft by conditional sales agreement except after thirty days' written notice by TWA to, and negotiations with, the Lending Banks under such mortgage. Because it would be necessary for TWA to obtain additional financing to acquire these six airplanes, TWA could not have entered into arrangements for their purchase without complying with or obtaining consents or waivers under both of these agreements. By contracting to purchase these airplanes immediately Hughes Tool Company insured that they would be available to TWA upon the completion of the necessary clearances under these agreements.

4. In addition, by selling these airplanes to TWA on a conditional sale basis on the terms outlined in Exhibit 1, Hughes Tool Company is providing TWA with financial arrangements on better terms than would otherwise be available. Under the bank Credit Agreement which TWA has arranged for the financing of the 20 Constellation Model 749A aircraft which it has contracted to purchase from Lockheed Aircraft Corporation, TWA will pay interest at the rate of 3% per annum and will pay over 35% of the purchase price of the Constellation 749A airplanes from its own funds. Interest payable to Hughes Tool Company is 2½% per annum and the initial payment required is only 16% of the purchase price.

5. Five of the six airplanes are to be used by TWA on a no-charge basis after acquisition thereof by Hughes Tool Company, pending action of the Board on this motion. The sixth airplane, to be selected by TWA, is to be delivered to TWA by Hughes Tool Company on or before [fol. 3985] August 31, 1950 after the completion of certain test flights by Hughes Tool Company.

6. The six airplanes are required by TWA for use in its domestic and international operations. The manufacture of Model 049 Airplanes has been discontinued and therefore no such airplanes are available from the manufacturer. TWA is to pay Hughes Tool Company only the price which Hughes Tool Company has paid Air France or Lockheed Aircraft Corporation, as the case may be, for such aircraft, plus such incidental expenses as Hughes Tool Company may incur in connection with purchasing these aircraft for TWA's account. With respect to the one aircraft that is to be used by Hughes Tool Company for a temporary period, the sales price to be paid by TWA is to be reduced by depreciation on the basis of a seven-year life. The purchase price of the 20 Lockheed Model 749A Constellation airplanes which TWA has recently contracted to purchase is approximately $930,000 per airplane.

7. The addition of these six airplanes to TWA's present fleet will permit increased Constellation service and increase revenue mileage and will thus improve TWA's serv-

ice to the public. It will also enable TWA to increase its gross revenues, improve its cash position in the immediate future and improve TWA's earning position. Because the six airplanes being acquired are of the same model as TWA's present domestic Constellation fleet, such increased service and revenue can be achieved with relatively little increase in overhead expenses, maintenance equipment or spare parts inventories.

WHEREFORE, TWA respectfully moves the Board to enter [fol. 3986] an order herein approving the sale by Hughes Tool Company to TWA of six Lockheed Constellation airplanes as hereinbefore set forth, and for such other and further relief as may be appropriate.

Respectfully submitted,

TRANSCONTINENTAL & WESTERN AIR, INC.

By /s/ WARREN LEE PIERSON

Chadbourne, Wallace, Parke & Whiteside,
25 Broadway,
New York 4, N. Y.

[fol. 3987] Exhibit 1

SALES AGREEMENT

THIS AGREEMENT, made and executed in duplicate as of the 2nd day of February, 1950, by and between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called "Seller"), with its principal place of business at Houston, Texas, and TRANSCONTINENTAL & WESTERN AIR, INC., a Delaware corporation (hereinafter sometimes called "Buyer"), with its principal place of business at Kansas City, Missouri.

WITNESSETH:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the six Lockheed Model 049 Constellation airplanes described below (hereinafter sometimes referred to as the "Airplanes"), upon the terms and conditions hereinafter set forth:

(a) Four Model 049 Lockheed Constellation airplanes, Manufacturer's Serial No. 2072, No. 2073, No. 2074 and No. 2075, including related conversion kits, complete and in the condition delivered to Seller pursuant to the agreement between Compagnie Nationale Air France and Seller dated January 11, 1950, a copy of which is attached hereto and by this reference made a part hereof, such airplanes being sometimes referred to as the Air France Airplanes and such agreement being referred to as the Air France Agreement.

(b) Two Model 049 Lockheed Constellation airplanes, Manufacturer's Serial No. 2070 and No. 2084, [fol. 3988] including related conversion kits, complete and in the condition delivered to Seller pursuant to the agreement between Lockheed Aircraft Corporation and Seller dated January 13, 1950, as amended, a copy of which agreement, as amended, is attached hereto and by this reference made a part hereof, such airplanes being sometimes referred to as the KLM Airplanes and such agreement, as so amended, being referred to as the Lockheed Agreement.

If Seller does not accept delivery from Lockheed Aircraft Corporation of the Airplane bearing Manufacturer's Serial No. 2084, this agreement shall be deemed to be cancelled with respect to such Airplane and neither party shall have any further obligation or liability to the other hereunder or otherwise with respect to such Airplane.

It is understood that Seller makes no warranties whatsoever regarding the Airplanes but will convey to Buyer all Seller's right and interest with respect to all manufacturers' warranties and guarantees acquired by Seller pursuant to the Air France Agreement.

2. Each of the Airplanes shall be delivered to Buyer by Seller and Buyer shall accept delivery thereof at Newark Airport, Newark, New Jersey, or such other airport as may be agreed upon. One of the Airplanes, to be designated by written notice from Buyer to Seller (herein sometimes refered to as the "Designated Airplane") shall be delivered by Seller to Buyer on or before August 31, 1950 upon five (5) days' prior written notice from Seller to Buyer, subject

to the prior fulfillment of the conditions specified in paragraph 9 hereof. The Airplanes, other than the Designated [fol. 3989] Airplane, shall be delivered by Seller to Buyer as soon as practicable after each such Airplane shall be delivered to Seller by Compagnie Nationale Air France or Lockheed Aircraft Corporation, as the case may be, and after all conditions specified in paragraph 9 hereof shall have been fulfilled.

3. The purchase price of each Airplane, other than the Designated Airplane, shall be the price therefor which Seller shall have paid Compagnie Nationale Air France, pursuant to the Air France Agreement; or Lockheed Aircraft Corporation, pursuant to the Lockheed Agreement, as the case may be, plus such direct out-of-pocket costs and expenses, if any, incurred by Seller in accepting delivery, storing and effecting delivery to Buyer (including insurance or ferry charges connected with any of the foregoing) and any costs incurred by Seller in modifying such Airplane pursuant to paragraph 8 hereof. The purchase price of the Designated Airplane shall be the price therefor which Seller shall have paid Compagnie Nationale Air France, pursuant to the Air France Agreement, or Lockheed Aircraft Corporation, pursuant to the Lockheed Agreement, as the case may be, plus such direct out-of-pocket costs and expenses, if any, incurred by Seller in accepting delivery and effecting delivery to Buyer (including insurance or ferry charges connected with either of the foregoing) and any costs incurred by Seller in modifying such Airplane pursuant to paragraph 8 hereof, less depreciation at the rate of one eighty-fourth of the sales price paid by Seller per month from the date of acquisition by Seller to the date of delivery by Seller to Buyer hereunder. Payment [fol. 3990] for each Airplane shall be made in the following manner:

(a) $100,000, plus any modification costs paid by Seller pursuant to paragraph 8 hereof, in cash, upon the delivery of each Airplane to Buyer hereunder;

(b) the balance of the purchase price shall be paid by Buyer to Seller in sixty equal consecutive monthly

installments, together with interest on the unpaid balance at the rate of two and one-half percent (2½%) per annum. The first of such payments relating to each Airplane shall be made on the first day of the month following the delivery of said Airplane and one of the remaining payments shall be made on the first day of each month thereafter until the whole purchase price shall have been paid.

4. Title to the Airplanes shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes shall pass to Buyer. The respective rights of Buyer and Seller to the Airplanes shall be more specifically set forth in one or more conditional sales agreements covering such Airplanes in form satisfactory to Buyer and Seller. Each such agreement shall include provisions that upon the happening of any one or more of the following events, namely:

(a) the breach on the part of the Buyer or any covenant or agreement contained herein or in such conditional sales agreement to be observed, done or performed by the Buyer;

[fol. 3991] (b) the occurrence of any event of default as provided in such conditional sales agreement;

(c) failure to make payment when due, and within five (5) days after demand in writing is made for payment, of any monthly installment of the purchase price of the Airplanes pursuant to paragraph 3;

then Seller may at once (or at any later time) proceed to take possession of the Airplanes in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes may be and take possession thereof and remove the same. Seller may resell the Airplanes, so retaken, at public

or private sale, with or without having the Airplanes at the place of sale, and upon such terms and in such manner as Seller may determine. Notice of the intention of Seller to so sell the Airplanes shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes, including any reasonable attorneys' fees incurred. The balance of such proceeds shall be applied to the payment of all sums owing to Seller under this Agreement and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the purchase price of any Airplane [fol. 3992] falling due after Seller has taken possession of such Airplane pursuant to this provision.

From and after delivery of the Airplanes to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes, Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller, as their interests may appear, in an amount at least sufficient to cover the then unpaid portion of the purchase price of the Airplanes. If any such Airplane shall be lost, destroyed or damaged to such an extent that repair thereof is impractical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Buyer shall be under no obligation to make any payments on account of the purchase price of such Air-

planes falling due after such loss, destruction or damage. Any insurance proceeds in excess of such amount, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

Buyer may at any time pay to Seller the unpaid balance [fol. 3993] of the purchase price of the Airplanes, or any part thereof, without premium or penalty.

Upon the payment to Seller of the balance of the purchase price of the Airplanes together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate (1) a bill of sale duly vesting in Buyer the title to the Airplanes acquired by Seller under the Air France Agreement or the Lockheed Agreement, as the case may be, free and clear of all liens, claims, charges and encumbrances attaching subsequent to the delivery of such Airplanes to Seller and not arising out of the possession, use or operation of the Airplanes by Buyer, and (2) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

5. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower or prospective borrower therefrom.

6. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes or the purchase thereof by Seller (other than the use by Seller of the Designated Airplane prior to delivery thereof to Buyer pursuant to paragraph 2 hereof), then in addition to the sales price provided for in paragraph 3, Buyer shall pay Seller the amount thereof, upon demand. Buyer agrees to indemnify and hold harmless [fol. 3994] Seller from any liabilities, costs or expenses to which Seller may become subject because of paragraph 4 of the Air France Agreement or because of paragraph 3(b) of the Lockheed Agreement.

7. Upon the written request of Seller and the written consent of Buyer, either before or after the delivery to Seller of any of the Airplanes, pursuant to the Air France Agreement or the Lockheed Agreement, Buyer shall take physical custody thereof pending fulfillment of the conditions specified in paragraph 9 hereof and during such interim period Buyer may store, use or modify such Airplanes consistent with the terms of such request and consent, carrying such insurance coverage as may reasonably be specified in such request and consent.

8. Upon the written request of Buyer and the written consent of Seller, either before or after the delivery to Seller of any of the Airplanes, pursuant to the Air France Agreement or the Lockheed Agreement, and pending or subsequent to the fulfillment of the conditions specified in paragraph 9 hereof, modification of any of the Airplanes may be undertaken by either Buyer or Seller or through a contractor to the extent and in the maner specified in such request and consent to the end that upon completion thereof such Airplanes may be most appropriate for the use of Buyer.

9. This Agreement is subject to the fulfillment of each and all of the following conditions on or before April 1, 1950 or such extension of such date as may be agreed upon in writing:

[fol. 3995] (a) any approval, consent or clearance of the C.A.B. which may be required pursuant to the Civil Aeronautics Act of 1938, as amended;

(b) any approvals, consents, clearances or waivers which may be required under the existing agreements of Buyer with The Equitable Life Assurance Society of the United States and with various lending banks.

This Agreement shall not be effective for any purpose unless and until Buyer has secured all such approvals, consents, clearances or waivers. Buyer shall furnish evidence, satisfactory to Seller, of all approvals, consents, clearances or waivers required under subdivision (b) of this paragraph

9 within thirty (30) days from the date of the approval of the Civil Aeronautics Board pursuant to subdivision (a) of this paragraph 9.

10. Upon the securing of the approvals, consents, clearances and waivers required by paragraph 9 hereof, this Agreement shall become binding and effective as of the day and year first above written.

IN WITNESS WHEREOF, the parties hereto have executed delivered this Agreement as of the day and year first above written.

HUGHES TOOL COMPANY

By /s/ NOAH DIETRICH

TRANSCONTINENTAL & WESTERN AIR, INC.

By /s/ A. V. LESLIE
Vice President & Treasurer

[fol. 3996]

AIR FRANCE AGREEMENT REFERRED TO IN PARAGRAPH 1(A) OF THE PRECEDING SALES AGREEMENT

[fol. 3997] January 11, 1950

Compagnie Nationale Air France
683 Fifth Avenue
New York 22, N. Y.

Dear Sirs:

The following is in confirmation of our agreement with respect to the purchase from you of 4 Model 049 Lockheed Constellation airplanes:

1—You agree to sell to us and we agree to purchase from you 4 Model 049 Lockheed Constellation airplanes having Manufacturer's Serial #2072, #2073, #2074 and #2075. All of such airplanes shall be delivered to us, at your expense and risk, at Newark Airport, N.J., or at such other airport as we may agree upon. Delivery of such airplanes shall be made as follows; one on or before each of the following dates in 1950: January 26, February 2, February 10, and February 20th. Such deliveries are subject only to delays caused by weather conditions on route from France and by work ordered by the Civil Aeronautics Authority in order to obtain certificates of airworthiness.

2—Each airplane when delivered shall be clean and in good operating condition, all in accordance with airline operating standards, without structural defects or substantial damage and in such condition that each should be entitled to a certificate of airworthiness of the Civil Aeronautics Authority under transport category of the Civil Aeronautics Regulations for operation at a take off gross weight of 93,000 pounds. There

shall be delivered to us with each airplane the necessary kits to permit conversion thereof so as to be eligible for a Civil Aeronautics Authority certificate of airworthiness to permit operation at a take off gross weight of 96,000 pounds. Each airplane shall be completely equipped (except for loose galley equipment, blankets, pillows, headrests and other passenger-comfort items normally unattached to aircraft and supplied by an airline for comfort of and service to passengers) and susceptible of immediate use as a transport airplane for passengers, cargo and mail on scheduled overwater night flights.

3—The price of each of such airplane so delivered shall be $625,000 less any reduction as hereinafter provided: It is agreed that none of the airplanes shall have been flown in excess of one hundred hours since the last major overhaul of all 4 engines and of all other items normally overhauled at the same time as engines. In the event that any engine of any such airplane, at the time of delivery to us, shall have been flown in excess of one hundred hours since such overhaul, then the price of such airplane shall be reduced by the amount of $10.00 for each such hour which is in excess of one hundred hours.

The purchase price shall be payable as follows:

a—$10,000.00 on account of the purchase price of each airplane or an aggregate of $40,000.00 upon the acceptance hereof by you.

[fol. 3998] b—Balance of the purchase price of each such airplane determined as above provided shall be payable to you upon delivery of each such aircraft in accordance with this agreement.

4—We shall pay any sales, use, gross receipts or excise taxes legally assessed against you by any taxing authority in the United States as a result of the sale and delivery of the airplanes.

5—Each airplane on delivery shall be accompanied by appropriate instruments of sale and assignment transferring good title to the airplane to us, in form sufficient to permit recordation of title thereto with the Civil Aeronautics Authority together with all manufacturers warranties and guarantees expressed or implied held by you in connection therewith and all rights based thereon or enuring to you as original purchaser of said airplanes.

If the foregoing conforms with our understanding, will you execute the original and duplicate original of this letter in the place indicated below and same executed will constitute a contract between us.

Yours very truly,

HUGHES TOOL COMPANY

By /s/ F. J. O'HARA
Attorney in Fact

Accepted:

January 11, 1950

COMPAGNIE NATIONALE
AIR FRANCE

/s/ HENRI J. LESIEUR

[fol. 3999]

LOCKHEED AGREEMENT REFERRED TO IN PARAGRAPH 1(B) OF THE PRECEDING SALES AGREEMENT

[fol. 4000]

Contract No. LD-73

Sales Agreement

(Lockheed Constellation)

This agreement, entered into in duplicate as of the 13th day of January, 1950, by and between Lockheed Aircraft Corporation, a California corporation (hereinafter sometimes called "Seller"), with an office at Burbank, California, and Hughes Tool Company (hereinafter sometimes called "Buyer"), with an office at Houston, Texas;

Witnesseth:

Whereas, Seller, in connection with the sale of certain new aircraft to Koninklijke Luchtvaart Maatschappij, N. V. (hereinafter referred to as "KLM"), has acquired from KLM a used Lockheed Constellation Model 049 airplane and anticipates that it will acquire, in that connection, another such aircraft, which two (2) aircraft respectively bear Manufacturer's Serial Nos. 049-2070 and 049-2084; and

Whereas, Buyer is desirous of purchasing and Seller is desirous of selling said aircraft;

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1—Number and Description of Airplanes

(a) Seller shall sell and deliver and Buyer shall purchase and accept delivery of, on the terms and conditions hereinafter set forth, two (2) used Lockheed Model 049 aircraft of the Lockheed Constellation type, respectively bearing Manufacturer's Serial Nos. 049-2070 and 049-2084 (here-

inafter referred to as the "Contract Airplanes"), acquired or to be acquired by Seller from KLM.

[fol. 4001] (b) It is understood that the Contract Airplanes have the following characteristics:

Takeoff Weight	93,000 lbs.
Landing Weight	83,000 lbs.

At the time of delivery hereunder of the Contract Airplane bearing Manufacturer's Serial No. 049-2084 it shall be in good operating condition, clean by airline operating standards and qualified for a then current Civil Aeronautics Authority Airworthiness Certificate under the Transport Category of the Civil Air Regulations of the United States, shall not have been flown more than 100 hours since the last major overhaul of all four engines (and of all other items normally over-hauled by KLM at the same time as engines), shall be equipped (including auto-pilot, radio and galley but excluding loose galley equipment, blankets, pillows, head-rests and other passenger comfort items normally unattached to aircraft and supplied by an airline for the comfort of its passengers) as heretofore normally operated by KLM in trans-Atlantic passenger service, and shall have had all exterior markings of other owners removed therefrom. In addition, Seller shall have painted thereon the exterior markings of Transcontinental & Western Air, Inc.

(c) In the event that the Contract Airplane bearing Manufacturer's Serial No. 049-2084 is not, at the time of the tender of delivery thereof by Seller to Buyer hereunder, in the condition and otherwise as described in paragraph (b) of this ARTICLE 1, then Buyer may refuse to accept delivery of such Contract Airplane, in which event Seller shall forthwith repay to Buyer, if theretofore paid by Buyer to Seller, the prepayment, hereinafter provided for, pertaining to such Contract Airplane, whereupon this agreement shall be deemed to be canceled with respect to such Contract Airplane and neither party shall have any further [fol. 4002] obligation or liability to the other hereunder or otherwise with respect to such Contract Airplane.

(d) It is acknowledged that buyer presently has possession, as Lessee, pursuant to the provisions of that certain Lease Agreement, as amended and supplemented, designated as Contract No. LD-70, of the Contract Airplane bearing Manufacturer's Serial No. 049-2070 and that delivery of such Contract Airplane to Buyer hereunder shall be effected concurrently with the redelivery of possession of such Airplane to Seller, as Lessor under said Contract No. LD-70, by Buyer, as such Lessee. During the period of three days next preceding the date hereinafter specified for the delivery hereunder to Buyer by Seller of the Contract Airplane bearing Manufacturer's Serial No. 049-2084, Seller shall make such Contract Airplane available, at Lockheed Air Terminal, Burbank, California, to representatives of Buyer for inspection. During said period, if requested by Buyer, Seller shall test fly such Contract Airplane for not more than one hour to demonstrate the functioning thereof and of its equipment. Three persons (or more, if consented to by Seller) designated by Buyer may participate in such test flights as observers. It is acknowledged and agreed by Buyer that representatives of Buyer have heretofore inspected and test flown the Contract Airplane bearing Manufacturer's Serial No. 049-2070 and that Buyer will accept delivery of such Contract Airplane, when tendered to Buyer by Seller hereunder, in whatever condition or configuration the same may be at the time of such tender unless prior thereto it shall have been lost or destroyed or damaged beyond repair in which event this agreement shall be and shall be deemed to be canceled as to such Contract Airplane and Seller shall repay to Buyer, if theretofore paid to [fol. 4003] Seller, the prepayment applicable thereto.

(e) In the event of the acceptance of delivery by Buyer of a Contract Airplane hereunder, it shall be conclusively deemed to be in the condition and otherwise as described in paragraph (b) of this ARTICLE 1 at the time of such delivery.

ARTICLE 2—DELIVERY

(a) Both of the Contract Airplanes shall be delivered by Seller to Buyer on or before February 1, 1950, at or in the

vicinity of Burbank, California, provided that Buyer shall not be required to accept delivery of either thereof prior to said date.

(b) In the event that the Contract Airplane bearing Manufacturer's Serial No. 049-2070 is not located at Lockheed Air Terminal, Burbank, California, on February 1, 1950, it shall be deemed to have been delivered to Buyer by Seller on that date irrespective of where it may be located. If seasonably requested in writing by Buyer, Seller shall deliver either or both of the Contract Airplanes, if flyable, at a place other than at or in the vicinity of Burbank, California, provided an amendment hereof, reflecting the delay, if any, in delivery and the increase in the purchase price occasioned by delivery at such other place, is executed.

ARTICLE 3—PRICE

(a) The purchase price of the Contract Airplane bearing Manufacturer's Serial No. 049-2070 is $615,905 and the purchase price of the Contract Airplane bearing Manufacturer's Serial No. 049-2084 is $626,500.

(b) In addition to the purchase price of each Contract Airplane, Buyer shall pay to Seller, upon demand, (1) the [fol. 4004] cost, including, without limitation, reasonable compensation for the preservation and protection of such Contract Airplane, incurred by Seller by reason of delay in delivery of such Contract Airplane for any period in excess of one week during which delivery is delayed by Buyer's fault or upon its responsibility and (2) any tax, other than a tax upon the income of Seller, paid by Seller by virtue of the sale, delivery, storage after tender of delivery, or transfer of such Contract Airplane hereunder. If claim is made against Seller for any such tax, Seller shall immediately notify Buyer. If seasonably requested by Buyer, in writing, Seller shall not pay any such tax except under protest and, if payment be made, shall use all reasonable efforts to obtain a refund thereof. If all or any part of such tax be refunded, Seller shall repay to Buyer so much thereof as Buyer shall have paid. Buyer shall pay to Seller, upon demand, all expenses incurred by Seller in protesting payment of such tax and in endeavoring to obtain such refund.

ARTICLE 4—PAYMENT

(a) The purchase price of each Contract Airplane shall be paid by Buyer to Seller in two installments as follows:

(i) A first installment (sometimes referred to herein as the "prepayment") in an amount equal to twenty-five per cent of the purchase price of such Airplane, payable immediately upon the execution and delivery of this agreement; and

(ii) A second installment in an amount equal to the purchase price, less the amount theretofore paid thereon by way of a prepayment, payable upon [fol. 4005] Seller delivering such Airplane to Buyer in accordance with this agreement;

provided, however, that Buyer may, at its election, defer until February 1, 1950, or such earlier date as Buyer may select, the payment of any or all of such installments which shall have become due and payable, in accordance with the foregoing provisions, prior to February 1, 1950 or such earlier date.

(b) All payments made pursuant to this agreement shall be made in lawful money of the United States of America or by check drawn upon and duly certified by a member bank of the United States Federal Reserve System and payable in such money, and, unless otherwise expressly provided, at Seller's office at Burbank, California.

(c) If this agreement is canceled or terminated by Seller or by Buyer under ARTICLE 5 (a) hereof, or by reason of a material default of Seller, prior to the delivery of the Contract Airplane bearing Manufacturer's Serial No. 049-2084, then Seller shall forthwith repay to Buyer the prepayment applicable to such undelivered Contract Airplane. Except as aforesaid, and as provided in ARTICLE 1 (c) and (d) hereof, Seller shall be under no obligation to repay any prepayment to Buyer.

ARTICLE 5—EXCUSABLE DELAY

(a) Seller shall be excused from, and shall not be liable for, any delay in its performance under this agreement, and shall not be deemed to be in default for any failure of per- [fol. 4006] formance thereunder, due to causes beyond its control and not occasioned by its negligence or fault. Such causes shall be deemed to include, without limitation, the failure or refusal, for any reason, of KLM to deliver to Seller, in accordance with the agreements between KLM and Seller, the Contract Airplane bearing Manufacturer's Serial No. 049-2084, the loss or destruction of or damage to such Contract Airplane prior to the tender of delivery thereof hereunder; insurrections; riots; fires, weather unfavorable for flying; explosions; accidents; governmental acts, priorities, regulations or orders; the application of any facilities or personnel, otherwise available for the performance hereof, to the performance of any military production for the Government of the United States of America; acts of God or acts of the public enemy; failure of or delays in transportation; inability to procure materials; epidemics; quarantine restrictions; and labor troubles causing cessation, slow-down or interruption of work; provided, that this agreement may be terminated as to such Contract Airplane upon five days' written notice to the other party (i) by Buyer if the delivery hereunder of such Contract Airplane hereunder shall be delayed by reason of any one or more of such causes for more than one month beyond the date when delivery is otherwise required hereunder, or (ii) by Seller if delivery hereunder of such Contract Airplane is so delayed for more than three months beyond such date.

ARTICLE 6—MODIFICATION KITS

(a) With respect to each Contract Airplane delivered by Seller to Buyer hereunder, Seller shall, as soon as possible thereafter, deliver to Buyer, free of charge, f.o.b. Burbank, California, Seller's Service Bulletin No. 548, together with [fol. 4007] the kit of parts therein described, which Service Bulletin pertains to the modification of aircraft of the type of the Contract Airplanes to establish a 96,000 pound gross takeoff weight therefor.

ARTICLE 7—WAIVER OF REPRESENTATIONS AND WARRANTIES

(a) Buyer acknowledges that the Contract Airplanes are used airplanes and that its opportunity for the inspection thereof is equal to the opportunity of Seller in that respect. Buyer acknowledges and agrees that no representations have been made to it by Seller or by any of Seller's officers, directors, employees, agents or representatives as to the condition of the Contract Airplanes, or either of them, or their fitness for any use. Buyer hereby expressly waives all warranties of every nature and kind, express or implied, arising by law or otherwise which, except for this waiver, will or might or may exist because of or arising out of the sale and delivery of the Contract Airplanes, or either of them, to Buyer by Seller hereunder.

ARTICLE 8—TECHNICAL DATA

(a) Seller shall furnish to Buyer, at Burbank, California, without additional charge, concurrently with the delivery of each of the Contract Airplanes, three copies of a Handbook of Flight Operations for the Contract Airplanes, each of which handbooks shall be bound in a looseleaf binder with a substantial cover and shall set forth in a complete and concise manner, with appropriate airspeed correction and other charts, and other flight data required by the Civil Aeronautics Authority for certification of an aircraft of the type of the Contract Airplanes under the Transport Category, [fol. 4008] and all essential information required by the pilot and the flight crew to operate the Contract Airplanes and their accessories and equipment (except such accessories and equipment as may have been incorporated in the Contract Airplanes by or for KLM and with respect to which Seller does not have data or accurate data) and three copies of Seller's Handbook of Crew Operating Instructions for aircraft of the type of the Contract Airplanes.

ARTICLE 9—CERTIFICATION

(a) Seller shall, for the Contract Airplane bearing Manufacturer's Serial No. 049-2084 prior to its delivery hereunder, obtain a Civil Aeronautics Authority Airworthiness

Certificate under the Transport Category of the Civil Air Regulations of the United States. The term "Civil Aeronautics Authority", as used in this agreement, includes the Civil Aeronautics Administration, the Civil Aeronautics Board and any other United States agency having jurisdiction in the premises.

ARTICLE 10—TITLE AND RISKS

(a) Title to the Contract Airplanes, as between Buyer and Seller, shall at all times prior to the delivery thereof to Buyer hereunder (except as title to the Contract Airplane bearing Manufacturer's Serial No. 049-2070 may be affected by the operation of the provisions of said Contract No. LD-70, hereinabove referred to) be in Seller, except that upon delivery of a Contract Airplane to Buyer by Seller hereunder title thereto shall vest in Buyer and Buyer shall thereafter bear all risk of loss or damage thereto.

(b) Upon delivery of a Contract Airplane hereunder Seller shall deliver to Buyer (i) A Bill of Sale duly vesting in Buyer good title thereto free and clear of any mortgage [fol. 4009] or other encumbrance and (ii) such other appropriate documents of title as Buyer may reasonably require.

ARTICLE 11—REPRODUCTION

(a) Nothing in this agreement shall convey to Buyer the right to reproduce or cause the reproduction of an airplane (or part thereof) of design identical or similar to that of the Contract Airplanes (or of parts thereof), or give to Buyer a license under any patents or rights owned or controlled by Seller.

ARTICLE 12—BENEFITS AND ASSIGNMENTS

(a) This agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but it may not be voluntarily assigned in whole or in part by Buyer prior to the delivery of both of the Contract Airplanes without the prior written consent of Seller, which consent will not be withheld unreasonably.

ARTICLE 13—NOTICES

(a) Any notice or communication pertaining to this agreement shall be deemed to have been duly given by a party hereto if served upon the other or if sent to the other by registered mail or by telegraph. Buyer shall forthwith, and may from time to time thereafter, specify by written notice to Seller the address to which notices shall be sent to Buyer.

(b) The date upon which any such notice or communication is served, or the date upon which it is received by the addressee, shall be deemed to be the date of such notice and the date it is given irrespective of any date appearing therein.

[fol. 4010] ARTICLE 14—AMENDMENTS AND RATIFICATION

(a) This agreement may not be varied or amended except by an instrument in writing executed concurrently with or subsequent to the execution of this agreement and signed on behalf of Buyer and of Seller by persons respectively thereunto duly authorized.

ARTICLE 15—APPLICABLE LAW

(a) This agreement shall be construed and performance thereof shall be determined according to the laws of the State of California.

ARTICLE 16—CONTRACT NUMBER

(a) This agreement may, for identification, be referred to as "Contract No. LD-73".

IN WITNESS WHEREOF, each party hereto has executed this agreement as of the day and year first above written.

LOCKHEED AIRCRAFT CORPORATION

By /s/ COURTLAND S. GROSS
Vice President

HUGHES TOOL COMPANY

By /s/ HOWARD P. HALL
Asst. Secty.

[fol. 4011]

SUPPLEMENTAL AGREEMENT

(Contract No. LD-73)

THIS SUPPLEMENTAL AGREEMENT, entered into in duplicate as of the 31st day of January, 1950, by and between LOCKHEED AIRCRAFT CORPORATION, a California corporation (hereinafter sometimes called "Seller"), with an office at Burbank, California, and HUGHES TOOL COMPANY (hereinafter sometimes called "Buyer"), with an office at Houston, Texas;

WITNESSETH:

WHEREAS, Buyer and Seller heretofore entered into that certain Sales Agreement, dated as of the 13th day of January, 1950, and designated as "Contract No. LD-73", relating to the sale by Seller and the purchase by Buyer of two (2) certain used Lockheed Constellation Model 049 airplanes respectively bearing Manufacturer's Serial Nos. 049-2070 and 049-2084; and

WHEREAS, Buyer and Seller are mutually desirous of amending said Sales Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. Paragraph (a) of ARTICLE 2 (DELIVERY) is hereby deleted from said Sales Agreement in its entirety and the following paragraph is hereby inserted therein in lieu thereof:

"(a) The Contract Airplane bearing Manufacturer's Serial No. 049-2070 shall be delivered by Seller to Buyer on or before February 24, 1950, at or in the vicinity of Burbank, California, provided, however, that Buyer shall not be required to accept delivery of such Airplane prior to said date. The contract Airplane bearing Manufacturer's Serial No. 049-2084 shall be delivered by Seller to Buyer on or before

February 16, 1950, at or in the vicinity of Burbank, California, provided, however, that Buyer shall not be required to accept delivery of such Airplane prior to said date."

2. Paragraph (b) of ARTICLE 2 (DELIVERY) of said Sales Agreement is hereby amended by deleting therefrom the [fol. 4012] word and figure "February 1, 1950" and by inserting therein in lieu thereof the word and figure "February 24, 1950".

3. The proviso contained in paragraph (a) of ARTICLE 4 (PAYMENT) of said Sales Agreement and reading as follows:

"provided, however, that Buyer may, at its election, defer until February 1, 1950, or such earlier date as Buyer may select, the payment of any or all of such installments which shall have become due and payable, in accordance with the foregoing provisions, prior to February 1, 1950 or such earlier date."

is hereby deleted therefrom and there is hereby inserted in lieu thereof the following proviso:

"provided, however, that Buyer may, at its election, defer until February 16, 1950, or such earlier date as Buyer may select, the payment of any or all of such installments relating to the Contract Airplane bearing Manufacturer's Serial No. 049-2084 which shall have become due and payable, in accordance with the foregoing provisions, prior to February 16, 1950, or such earlier date, and that Buyer may, at its election, defer until February 24, 1950, or such earlier date as Buyer may select, the payment of any or all of such installments relating to the Contract Airplane bearing Manufacturer's Serial No. 049-2070 which shall have become due and payable, in accordance with the foregoing provisions, prior to February 24, 1950, or such earlier date."

IN WITNESS WHEREOF, each party hereto has executed this Supplemental Agreement as of the day and year first above written.

LOCKHEED AIRCRAFT CORPORATION

By /s/ Courtlandt S. Gross
Vice President and General Manager

HUGHES TOOL COMPANY

By /s/ T. A. Slack
Vice President

[fol. 4013]

February 2, 1950

Hughes Tool Company
Houston, Texas

Gentlemen:

Please refer to Contract No. LD-73 as heretofore amended and supplemented. This will confirm our mutual understanding and agreement as set forth in the numbered paragraphs below, it being understood that hereinafter for convenience you will be referred to as "Buyer" and we will be referred to as "Seller".

1. The purchase price of the airplane covered by said Contract and bearing Manufacturer's Serial No. 049-2084 (hereinafter for convenience sometimes referred to as "Airplane 2084") shall be $624,200.00 in lieu of $626,500.00.

2. Airplane 2084 shall be delivered by Seller to Buyer at or in the vicinity of Newark, New Jersey, in lieu of at or in the vicinity of Burbank, California, on, or as soon as possible prior to, February 4, 1950, in lieu of on or before February 16, 1950. This instrument shall be deemed to be, with respect to the place of delivery of Airplane 2084, the amendment referred to in paragraph (b), ARTICLE 2 (DELIVERY) of said Contract. Buyer hereby waives the requirement relating to the period and place of inspection set forth in the second sentence of paragraph (d) of ARTICLE 1 (NUMBER AND DESCRIPTION OF AIRPLANES)

of said Contract and agrees that its representatives shall inspect Airplane 2084 at Newark, New Jersey, prior to the close of business February 3, 1950.

3. Concurrently with the delivery of Airplane 2084 by Seller to Buyer at Newark, New Jersey, the entire purchase price thereof shall be paid by Buyer to Seller.

4. As soon as possible following the delivery of Airplane 2084, if delivered, Seller shall deliver to Buyer, in care of Transcontinental & Western Air, Inc., at Kansas City, Missouri, fifty-three (53) No. AD-2 Life Vests.

5. It is understood that this instrument shall and does further amend said Contract as heretofore supplemented and amended in every particular in which any provision thereof is in conflict with or inconsistent with any provision of this instrument, provided, however, that nothing in this instrument shall amend or be deemed to amend any of the provisions of paragraph (c) of ARTICLE 1 of said Contract.

If the foregoing correctly sets forth our understanding and agreement in the premises, kindly date and execute, as indicated, the original and a copy hereof and return [fol. 4014] such copy to us.

Very truly yours,

LOCKHEED AIRCRAFT CORPORATION

by (s) Courtlandt S. Gross
Vice President and
General Manager

The foregoing correctly sets forth our understanding and agreement in the premises.

Dated: February 2, 1950

HUGHES TOOL COMPANY

By (s) T. A. Slack
Its Vice Pres.

[fol. 4015]

[Stamp—Received—Docket Section—Mar 29—3:25 PM —'51—Civil Aeronautics Board]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF TRANSACTIONS

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.,
630 Fifth Avenue,
New York 20, N. Y.

—and—

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4016]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF TRANSACTIONS

TRANS WORLD AIRLINES, INC., a Delaware corporation (herein referred to as "TWA"), respectfully moves that the Board enter an order herein approving (1) the proposed sale by TWA to Hughes Tool Company (herein referred to as "Hughes"), of one Martin Model 404 Airplane pursuant to an agreement dated December 4, 1950 between TWA and Hughes, a copy of which is attached hereto as Exhibit A, (2) the proposed financing by TWA through Hughes of the final instalment of the purchase price of four Lockheed Constellation Model 749A Airplanes by means of a conditional sales contract between TWA and Hughes pursuant to an agreement dated March 2, 1951 between TWA and Hughes, a copy of which is attached hereto as Exhibit B, and an agreement dated March 2, 1951 between TWA, Hughes and Lockheed Aircraft Corporation (herein referred to as "Lockheed"), a copy of which is attached hereto as Exhibit C, (3) the proposed sale by TWA to Hughes of one Lockheed Constellation Model 749A Airplane pursuant to the agreement dated March 2, 1951 between TWA and Hughes, attached hereto as Exhibit [fol. 4017] II to Exhibit B, and (4) the agreements between TWA, Hughes and The Equitable Life Assurance Society of the United States (herein called "Equitable"),

copies of which are attached hereto as Exhibits D and E; and that the Board modify its order approving the acquisition by Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, so as to permit the performance of such transactions and agreements.

In support of such motion, TWA shows to the Board:

A. *Sale of Martin Airplane*

1. By contract dated February 22, 1950, TWA contracted to purchase from The Glenn L. Martin Company 30 Martin Model 404 Airplanes. This contract, referred to as Contract No. 1116, was amended by Contract Change Order No. 4 to provide for the purchase by TWA of an additional 11 Martin Model 404 Airplanes. One of such airplanes was ordered by TWA at the request of and for the account of Hughes. TWA has agreed to sell this airplane to Hughes, subject to approval of the Board, by agreement dated December 4, 1950, a copy of which is attached hereto as Exhibit A.

2. Under such agreement Hughes will pay to TWA all costs incurred by TWA in connection with the purchase of this airplane from The Glenn L. Martin Company and the sale thereof to Hughes.

3. This airplane was included in Contract No. 1116 for the convenience of all the parties to the transaction and so as not to complicate the arrangements under which The Glenn L. Martin Company obtained credit to finance the manufacture of the Model 404 Airplanes and under which TWA and Eastern Air Lines at the same time obtained security for their advance payments made to The Glenn L. Martin Company.

4. The purchase by Hughes of a Martin Model 404 Aircraft is of potential benefit to TWA in that under Contract [fol. 4018] No. 1116 the purchase price of each airplane purchased by TWA is reduced by $12,500 if The Glenn L. Martin Company manufactures more than 100 of such airplanes in continuous production.

B. *Financing of Four Lockheed Constellation Model 749A Airplanes*

5. By contract dated March 2, 1951 between TWA and Hughes, a copy of which is attached hereto as Exhibit B, Hughes has agreed in effect to finance the final instalment of the purchase price of four Lockheed Constellation Model 749 Airplanes which TWA has agreed to purchase from Lockheed pursuant to Contract LD-60. Hughes has agreed to pay to Lockheed the second and final instalment of the purchase price of such airplanes and to sell such airplanes to TWA on a conditional sale basis, subject to the approval herein requested and to the other conditions set forth in such agreement. Lockheed has agreed to this transaction by an agreement dated March 2, 1951 between TWA, Hughes and Lockheed, a copy of which is attached hereto as Exhibit C.

6. Hughes is taking title to these four airplanes and selling them to TWA on a conditional sale basis solely for the purpose of enabling TWA to finance the acquisition of such airplanes. The terms and conditions of sale are substantially the same as those contained in the agreement dated as of February 2, 1950 between Hughes and TWA relating to the sale from Hughes to TWA of six Constellation Model 049 Airplanes on a conditional sale basis, which was approved by Board Order No. E-4160. The details of the arrangements between the parties are more specifically set forth in the conditional sale contract, a copy of which is attached as Exhibit I to Exhibit B.

7. TWA is to pay Hughes for these airplanes only the amounts which Hughes has paid to Lockheed, with interest [fol. 4019] on the unpaid balance as provided in the conditional sale contract. Hughes is providing TWA with financing for the acquisition of these four airplanes on better terms than would otherwise be available to TWA.

8. These four airplanes are required by TWA for use in its domestic and international operations. The addition of these planes to TWA's present fleet will permit increased Constellation service and increased revenue mileage and will thus improve TWA's service to the public.

C. *Sale of One Lockheed Constellation Model 749A Airplane*

9. By contract dated May 31, 1949, referred to as Contract No. LD-60, TWA contracted to purchase from Lockheed 20 Lockheed Constellation Model 749A Airplanes. Upon the exercise of options granted to TWA to purchase additional airplanes, Contract No. LD-60 was amended by Contract Change Order No. 9 to provide for the purchase by TWA of an additional six Lockheed Constellation Model 749A Airplanes. One of such airplanes was ordered by TWA at the request of and for the account of Hughes. TWA has agreed to sell this airplane to Hughes, subject to the approval of the Board, by agreement dated March 2, 1951, a copy of which is attached hereto as Exhibit B. The details of this transaction are set forth in the letter agreement dated March 2, 1951 attached thereto as Exhibit II.

10. Under such letter agreement Hughes will pay to TWA all costs incurred by TWA in connection with the purchase of this airplane from Lockheed and the sale thereof to Hughes.

11. This airplane was included in Contract No. LD-60 for the convenience of all the parties to the transaction. The purchase by Hughes of a Lockheed Constellation Model 749A Airplane is of substantial benefit to TWA in that under Contract No. LD-60 the purchase price of each air-
[fol. 4020] plane purchased by TWA is reduced as the number of planes purchased thereunder is increased through the exercise by TWA of option rights.

D. *Agreements for Sale of Capital Stock of TWA.*

12. By contract dated April 5, 1950 between Hughes, TWA and Equitable, TWA agreed that on or before December 31, 1951, it would sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 and Hughes agreed that it would cause

TWA to perform such agreement and that if such shares were not otherwise sold it would itself buy sufficient shares of the capital stock of TWA to provide such net proceeds or would lend to TWA $5,000,000 evidenced by a subordinated note, all as more fully provided in such agreement (herein refefred to as the "1950 Agreement"), a copy of which is attached hereto as Exhibit D.

13. By contract dated January 16, 1951 between Hughes, TWA and Equitable, TWA agreed that on or before December 31, 1952 it would sell sufficient shares of its unissued capital stock (in addition to stock to be sold pursuant to the 1950 Agreement) so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 and Hughes agreed that it would cause TWA to perform such agreement and that if such shares were not otherwise sold it would itself buy sufficient shares of the capital stock of TWA to provide such net proceeds or would lend to TWA $5,000,000 evidenced by a subordinated note, all as more fully provided in such agreement (herein referred to as the "1951 Agreement"), a copy of which is attached hereto as Exhibit E.

14. Both agreements provide that the obligations of Hughes under such agreements are subject to the approval [fol. 4021] of the Civil Aeronautics Board.

15. The execution of both the 1950 Agreement and the 1951 Agreement were essential parts of the transactions pursuant to which TWA arranged to purchase and finance new fleets of Martin and Constellation aircraft. The execution of the 1950 Agreement was made a condition precedent by Equitable to its consent to the purchase by TWA of 30 Martin Model 404 aircraft and to the creation of indebtedness, secured by a chattel mortgage on such aircraft, required to finance such purchase. The execution of the 1951 Agreement was made a condition precedent by Equitable to its consent to the purchase by TWA of 10 Lockheed Model 1049 Constellation Aircraft and to the creation of indebtedness, secured by a chattel mortgage on such aircraft, required to finance such purchase.

16. The 1950 Agreement and the 1951 Agreement were entered into by Hughes to enable TWA to purchase aircraft required by TWA and essential to its future operations. Their purpose is to aid TWA by providing it with additional equity capital, whether by sale of stock to others, by sale of all such stock to Hughes, by the purchase by Hughes of its pro rata share of stock offered to others or by means of a subordinated loan. The execution and performance of both these agreements will be of substantial benefit to TWA.

WHEREFORE, TWA respectfully moves the Board to enter an order herein approving (1) the sale by TWA to Hughes of one Martin Model 404 Airplane; (2) the financing by Hughes of four Lockheed Constellation Model 749A Airplanes; (3) the sale by TWA to Hughes of one Lockheed Constellation Model 749A Airplane; and (4) the agreements relating to the sale of stock of TWA attached hereto as Exhibits D and E, all as hereinabove set forth; and that the Board modify its order approving the acquisition by Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, so as to permit [fol. 4022] the performance of such transactions and agreements, and for such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ WARREN LEE PIERSON

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4023]

EXHIBIT A

HUGHES TOOL COMPANY
5425 Polk Avenue,
Houston, Texas.

December 4, 1950

Trans World Airlines, Inc.,
101 West 11th St.,
Kansas City 6, Missouri.

Gentlemen:

We understand that you have entered into a contract, dated February 22, 1950, with The Glenn L. Martin Company, referred to as Contract No. 1116, relating originally to the purchase by you of thirty Martin Model 4-0-4 airplanes. We also understand that by amendment to Contract No. 1116, pursuant to Contract Change Order No. 4, you have contracted to purchase from The Glenn L. Martin Company eleven additional Martin Model 4-0-4 airplanes and that under Contract No. 1116, as presently amended, similar contractual terms and conditions are applicable to the eleven additional airplanes as to the thirty original airplanes except that the price of each of the eleven additional airplanes may be increased due to escalation. This will confirm our agreement with respect to one of the eleven additional Martin Model 4-0-4 airplanes, hereinafter referred to as "the Airplane", which you have contracted to purchase pursuant to Contract Change Order No. 4.

We agree to purchase, and you agree to sell and transfer, all your right, title and interest in and to the Airplane upon the following terms and conditions:

(1) The Airplane shall be the sixth of said eleven additional airplanes and scheduled for delivery on or before March 31, 1952; provided, however, that if you should subsequently wish to designate one of the eleven additional airplanes other than the sixth in substitu-

tion for the sixth, we will not unreasonably withhold our consent and agreement to such substitution. The Airplane shall be subject to change orders heretofore and hereafter agreed upon between yourselves and The Glenn L. Martin Company, it being agreed that the Airplane is to be substantially similar to the other 10 of said 11 additional Martin Model 4-0-4 Airplanes, but you shall use your best efforts to obtain the agreement of The Glenn L. Martin Company to any special changes we may reasonably request with respect to the Airplane.

(2) During manufacture of said eleven additional airplanes, you shall perform the same functions of inspection, plant representation, and general contract administration without distinction as among said eleven additional airplanes; i.e., on the same basis and to the same standards with respect to the Airplane as apply to the other ten airplanes which are for your own account.

[fol. 4024] (3) Upon your receipt of notice from The Glenn L. Martin Company of the date they expect the Airplane to be ready for flight tests, you shall notify us thereof, and as promptly as possible thereafter you shall advise us of the amount of the balance of purchase price due to The Glenn L. Martin Company upon delivery. We shall promptly put you in funds to pay such balance of purchase price, and we hereby authorize you to pay such balance of purchase price to The Glenn L. Martin Company against delivery of the Airplane, and in our name and on our behalf to accept delivery of the Airplane and execute all instruments and take all steps appropriate to the end that delivery of the Airplane for our account be effected at the point and upon the basis set out in your contract with The Glenn L. Martin Company, with title vesting in us and with all risk and expense for our account, and following delivery to ferry the Airplane to such other point within the United States as we may request.

(4) We shall pay the same purchase price for the Airplane as you are obligated to pay The Glenn L. Martin Company, such payment to be made as follows:

(a) Forthwith upon fulfillment of the conditions set forth at paragraph 8 hereof, we shall reimburse you for all installments of the purchase price of the Airplane which you have theretofore made to The Glenn L. Martin Company.

(b) Upon notice from you, we shall forthwith put you in funds to meet when due all installments of the purchase price of the Airplane which become due subsequent to fulfillment of the conditions set forth in paragraph 8 hereof.

(5) In addition to the purchase price of the Airplane we shall pay you, following fulfillment of the conditions set forth in paragraph 8 hereof and as the sums become ascertained in normal course:

(a) Such sums, if any, as you may be required to pay to The Glenn L. Martin Company with respect to the Airplane as an adjustment of the purchase price thereof, pursuant to the contract between yourselves and The Glenn L. Martin Company, including without limitation adjustments due to change orders.

(b) Such sums, if any, as are represented by any sales or use tax imposed upon or paid by you by reason of the sale or use of the Airplane or the purchase by us hereunder.

(c) Such sums as represent, under sound accounting principles, a proper allocation to the Airplane of its proportionate share of the general expenses heretofore and hereafter incurred by you in negotiating your general contractual arrangements with The Glenn L. Martin Company, and the performance of functions of inspection, plant representation, and [fol. 4025] general contract administration, plus the total of such sums, if any, as represent direct out-of-pocket costs and expenses to you solely on account of, and attributable to, the Airplane and

acceptance of delivery and ferrying thereof, including, without limitation, the cost and expenses incidental to your providing customer furnished equipment for the Airplane.

(6) In adjustment of the sums we are obligated to pay you, you shall credit or pay to us, as appropriate, any credits allowed or payments made to you by The Glenn L. Martin Company with respect to the Airplane pursuant to your contractual arrangements with The Glenn L. Martin Company, and you shall remit to us such interest as you receive from The Glenn L. Martin Company on account of installment payments with respect to the Airplane for the period subsequent to the date we have reimbursed you for such installment payments, and you shall remit to us any repayments by The Glenn L. Martin Company of installment payments with respect to the Airplane for which we have reimbursed you.

(7) Following our reimbursement to you of any installment payments you have made with respect to the Airplane, you shall, subject to any consents or waivers required by the provisions of any contractual arrangements to which you are a party, execute any instruments in the nature of assignment or to evidence subrogation which we may reasonably request in view of our interest in the Airplane and our rights and obligations hereunder. It is understood that you make no warranties whatsoever regarding the Airplane but will convey to us all your assignable rights and interests in all manufacturers' warranties and guarantees acquired by you pursuant to your agreement with The Glenn L. Martin Company.

(8) This agreement is subject to any approval, consent or clearance of the Civil Aeronautics Board which may be required pursuant to the Civil Aeronautics Act of 1938, as amended.

If the foregoing correctly sets forth the agreement between us, please execute and return the enclosed copy hereof, and this shall constitute the contract between us.

Very truly yours,

HUGHES TOOL COMPANY

By /s/ NOAH DIETRICH
Executive Vice President

Agreed:

TRANS WORLD AIRLINES, INC.

By /s/ WARREN LEE PIERSON
Chairman of the Board

Dated: March 2, 1951

[fol. 4026]

EXHIBIT B

March 2, 1951

Hughes Tool Company
7000 Romaine
Hollywood, California

Gentlemen:

This will confirm our agreement with respect to the last five (of the total twenty-six) Lockheed Model 749A airplanes which we have agreed to purchase from Lockheed Aircraft Corporation pursuant to Contract No. LD-60, as amended, such last five airplanes being hereinafter sometimes called the "Airplanes."

I. With respect to four of the Airplanes (which shall be the first four thereof delivered unless we designate an Airplane other than the fifth Airplane delivered pursuant to II below):

1. You shall pay to Lockheed Aircraft Corporation the second and final installment of purchase price with respect to each of such Airplanes upon notice from us,

from time to time, stating the amount of such second and final installment and that the Airplane to whose purchase such payment is applicable is ready for delivery by Lockheed Aircraft Corporation.

2. Upon your making each such payment provided for by subparagraph 1., we shall:

a. accept delivery from Lockheed Aircraft Corporation of the Airplane to whose purchase such payment is applicable, and effect with Lockheed Aircraft Corporation the transfer of title to such Airplane to you; and

b. retain possession of such Airplane pursuant and subject to that certain "Conditional Sale Contract" of even date between us attached hereto and marked "Exhibit I".

II. With respect to one of the Airplanes (which shall be the fifth of the Airplanes delivered unless we designate a different Airplane in lieu of the fifth delivered):

1. You agree to purchase, and we agree to sell and transfer, all our right, title and interest in and to such Airplane upon your making payment therefor and upon all the other terms and conditions with respect thereto set out in that certain Letter Agreement of even date between us attached hereto and marked "Exhibit II".

III. This agreement and the "Conditional Sale Contract" and the Letter Agreement attached hereto are subject to there having been obtained, on or before March 31, 1951 or such extension of such date as may be agreed upon in writing, any approval, consent or clearance of the C.A.B. which may be required pursuant to the Civil Aeronautics Act of 1938, as amended, and neither this agreement nor such "Conditional Sale Contract" nor such Letter Agree-
[fol. 4027] ment shall be effective for any purpose unless and until such approval, consent or clearance shall have been obtained.

If the foregoing correctly sets forth our agreement, please execute and return the copy hereof enclosed for that purpose.

Very truly yours,

TRANS WORLD AIRLINES, INC.
By /s/ ERLE M. CONSTABLE
Treasurer

Confirmed:

HUGHES TOOL COMPANY

By /s/ T. A. SLACK
Vice President

[fol. 4028]

EXHIBIT I

CONDITIONAL SALE CONTRACT

Contract of Conditional Sale made as of the 2nd day of March, 1951, between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called the "Seller"), with its principal place of business at Houston, Texas, and TRANS WORLD AIRLINES, INC. (formerly Transcontinental & Western Air, Inc.), a Delaware corporation (hereinafter sometimes called the "Buyer"), with its principal place of business at Kansas City, Missouri,

THE INTEREST OF THE SELLER IN THE AIRCRAFT AND EQUIPMENT COVERED HEREBY IS THAT OF A CONDITIONAL SELLER AND THE INTEREST OF THE BUYER THEREIN IS THAT OF A CONDITIONAL BUYER.

WITNESSETH:

WHEREAS, TWA has contracted to purchase from Lockheed Aircraft Corporation (hereinafter sometimes called "Lockheed") certain Lockheed Model 749A Constellation airplanes, and, with respect to each of four of the last five thereof to be delivered (such four being hereinafter sometimes called the "Airplanes") TWA has paid to Lockheed

a first installment of purchase price in the amount of $230,625; and

WHEREAS, Hughes has agreed to pay to Lockheed the second and final installment of purchase price with respect to each of the Airplanes and in consideration thereof will obtain title to the Airplanes as delivered by Lockheed; and

WHEREAS, Hughes desires to sell and TWA desires to buy the Airplanes pursuant to the conditional sale arrangements set forth herein,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the Airplanes upon the terms and conditions hereinafter set forth. The serial numbers applicable to the respective Airplanes, as soon as determined, shall be set out in an amendment to this Contract.

2. Simultaneously upon conveyance of title to each Airplane from Lockheed to Seller, such Airplane shall forthwith be delivered to Buyer and Buyer shall accept such delivery at Burbank, California.

3. The purchase price of each Airplane for purposes of this Contract shall be the amount which Seller shall have paid Lockheed as the second and final installment of the purchase price under Contract No. LD-60, as amended, and such purchase price shall be paid by Buyer to Seller in sixty equal consecutive monthly installments, together with interest on the unpaid balance at the rate of three percent (3%) per annum. The first of such payments relating to [fol. 4029] each Airplane shall be made on the first day of the month next following the month in which the Airplane is delivered and one of the remaining payments shall be made on the first day of each month thereafter until the whole of such purchase price shall have been paid. All payments shall be made to the Seller at the Hughes Tool Company, Houston, Texas.

4. Title to the Airplanes shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes shall pass to Buyer.

5. Upon the happening of any one or more of the following events, namely:

(a) default in making any payment, in the manner herein specified, of any monthly installment of the purchase price of the Airplanes and such default shall continue unremedied for five (5) days after written notice thereof shall have been delivered by Seller to Buyer; or

(b) default shall be made by the Buyer in the observance or performance by the Buyer of any other covenant or agreement contained herein, and such default shall continue unremedied for thirty (30) days after written notice thereof shall have been delivered by Seller to Buyer; or

(c) the Buyer shall become insolvent, or shall file a voluntary petition in bankruptcy, or shall file a voluntary petition or answer seeking or consenting to reorganization pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee of or for it or a substantial part of its property; or

(d) an order shall be entered pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors approving a petition seeking a reorganization of, or if an order shall be entered appointing a receiver or trustee of, or for any substantial part of the property of, or if a warrant of attachment shall be issued against any substantial part of the property of, the Buyer, and any such order is not dismissed or

stayed within sixty (60) days from its entry or such attachment is not dismissed or bonded within thirty (30) days from its levy; or

(e) the Debentures at the time issued and outstanding under that certain Indenture, dated as of December 1, 1945, between Buyer and The Commercial National Bank and Trust Company of New York, as Trustee, as said Indenture may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Debentures as set forth therein, upon the occurrence of any of the "events of default" described in said Indenture, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof); then Seller may at once (or [fol. 4030] at any later time) proceed to take possession of the Airplanes in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes may be and take possession thereof and remove the same. Seller may resell the Airplanes, so retaken, at public or private sale, with or without having the Airplanes at the place of sale, and upon such terms and in such manner as Seller may determine. Notice of the intention of Seller to so sell the Airplanes shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes, including any reasonable attorneys' fees incurred. The balance of such proceeds shall be applied to the payment of all sums owing to Seller under this agreement and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the purchase price of any Airplane falling due after

Seller has taken possession of such Airplane pursuant to this provision.

6. From and after delivery of the Airplanes to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes,

(1) Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

(2) Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller, as their interests may appear, in an amount at least sufficient to cover the then unpaid portion of the purchase price of the Airplanes. If any such Airplanes shall be lost, destroyed or damaged to such an extent that repair thereof is impractical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Upon such payment to the Seller of insurance to the extent of the unpaid balance of the purchase price of any Airplane, absolute title to the Airplane so damaged or to any parts of an Airplane so destroyed shall vest in Buyer and Seller shall deliver to Buyer such proper documents of title with respect thereto as Buyer may reasonably require. Buyer shall be under no obligation to make any payments on account of the purchase price of such Airplane falling due after such loss, destruction or damage. Any insurance proceeds in excess of the amount payable to the Seller, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

[fol. 4031] 7. Buyer may at any time pay to Seller the unpaid balance of the purchase price of the Airplanes, or any part thereof, without premium or penalty.

8. Upon the payment to Seller of the balance of the purchase price of the Airplanes together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate (1) a bill of sale duly vesting in Buyer the title to the Airplanes free and clear of all liens, claims, charges and encumbrances attaching subsequent to the delivery of the Airplanes to Seller and not arising out of the possession, use or operation of the Airplanes by Buyer, and (2) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

9. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes or the purchase thereof by Seller, then in addition to the sales price provided for in paragraph 3, Buyer shall pay to Seller the amount thereof, upon demand.

10. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower.

11. The Buyer agrees that it will pay and discharge all taxes, assessments, governmental charges and all charges for keep, repairs, storage, maintenance or accessories, which if unpaid might become a lien, charge or encumbrance upon or against any of the Airplanes; and upon the failure of the Buyer so to do the Seller may make any such payment; provided, however, that nothing herein contained shall require the Buyer to pay such tax, assessment or charge so long as the Buyer shall in good faith contest the validity thereof and shall furnish the Seller such bond or indemnity as the Seller shall require, unless, in the judgment of the Seller, forfeiture is likely to result from any such failure to pay. Any sum or sums so paid by the Seller,

together with interest thereon at the highest lawful contract rate, shall be and become a part of the sum which the Buyer is required to pay under this contract, and shall immediately, without demand, be due and be repaid by the Buyer to the Seller.

The Buyer will, upon written request from the Seller, (1) reimburse the Seller for all filing or recording fees incurred in connection with filing or recording or refiling or re-recording this contract and all supplements and additions hereto, if any; (2) execute and deliver to the Seller all such further documents and instruments and do such further acts as may be necessary to perfect the rights of the Seller herein contemplated; and (3) furnish to the Seller at reasonable intervals reports and certificates setting forth all the information necessary to inform the Seller as to the continued existence, location and condition of the Airplanes. The Seller shall also have the right to inspect the Airplanes at all times when the same are not in use and when such inspection can be had without undue inconvenience or expense to the Buyer.

[fol. 4032] 12. Buyer agrees to maintain the Airplanes in good repair and working condition at its own expense, except any airplane lost, destroyed or so damaged that insurance with respect thereto is payable to the Seller pursuant to paragraph 6 hereof. Subject to the proper performance of such covenant, the Buyer may make repairs and replacements to the Airplanes and may substitute for engines, propellers and any other equipment installed in or attached to the Airplanes, engines, propellers or other equipment of substantially the same kind and value. In case of any such substitution title to the equipment substituted shall immediately be vested in Seller and shall become subject to the provisions of this Conditional Sale Contract while title to the equipment for which such substitution has been made will immediately vest in Buyer.

13. Until title to the Airplanes shall have passed to the Buyer hereunder, the Buyer shall have no right, power of authority to sell, transfer, assign, mortgage or encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof (except as provided in paragraph 12 hereof) or any interest therein, and the Buyer hereby

agrees that, except as permitted by paragraph 12 hereof, the Buyer will not (voluntarily or involuntarily), sell, transfer, mortgage, encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof or any interest therein. Buyer agrees, except as provided herein, that the Airplanes will be used exclusively for its commercial air transport operations and related activities and that it will not permit the Airplanes to be used or possessed by others. Buyer may permit the use of the Airplanes by other airlines with which Buyer enters into interchange agreements provided that any such use by other airlines shall for the purposes of this agreement be considered to be use by the Buyer.

14. To the extent, if any, that there is a conflict between any of the provisions of this agreement and any of the provisions of the Chattel Mortgage dated as of March 25, 1948 between the Buyer and Bankers Trust Company, as Trustee, or of the Chattel Mortgage dated as of August 4, 1949 between the Buyer and Mellon National Bank & Trust Company, as Trustee, or of the chattel mortgages contemplated by the 1950 Credit Agreement and the 1951 Credit Agreement between the Buyer and Mellon National Bank and Trust Company, as agent, and the Lending Banks named therein, the provisions of such chattel mortgages shall prevail and the provisions of this agreement shall be deemed amended to the extent necessary to avoid such conflict.

15. Before delivery of each Airplane to Buyer hereunder, Buyer will cause to be fastened thereon in a location reasonably adjacent to, and not less prominent than that of, the airworthiness certificate for such Airplane, a name plate no larger than four inches by seven inches bearing the following legend:

> "Hughes Tool Company holds legal title to this Airplane as Conditional Seller."

Buyer shall maintain such name plate in such location or in one of at least equal prominence and visibility at all times. Buyer may affix to the Airplanes Buyer's name, insignia or other legends customarily displayed by Buyer on its airplanes.

[fol. 4033] 16. Buyer shall indemnify and hold harmless Seller, its agents and its employees from any and all liability for losses, expenses, damages, demands and claims in connection with or arising out of any death of, or injury or alleged injury or damage to, persons or property sustained, or alleged to have been sustained, in connection with or arising or alleged to have arisen out of Buyer's possession, use or operation of the Airplanes and Buyer agrees to handle any claim and defend any suit or action brought against Seller, its agents or its employees, or any of them, based on any such death, injury or damage, or alleged injury or damage, and to pay all damages, costs and expenses, including attorneys' fees, in connection therewith or resulting therefrom.

Buyer's liability to Seller under this paragraph 16 is conditioned upon Seller's promptly giving notice to Buyer of institution of such suit or action or of receipt of such claim or demand. Buyer shall have the option at any time to conduct negotiations with the party or parties making any such claim or demand, and may intervene in any such suit or action. Whether or not Buyer intervenes in any such suit or action, it shall be entitled to assume, conduct or control the defense thereof, and seller shall not settle or discharge any such claim, demand, suit, action or judgment without prior notice to and the consent of Buyer.

In Witness Whereof the parties hereto have executed and delivered this agreement as of the day and year first above written.

Hughes Tool Company
By /s/ T. A. Slack
(Corporate Seal)

Attest:

/s/ Roy H. Sherwood

Trans World Airlines, Inc.
By /s/ Erle M. Constable
Treasurer
(Corporate Seal)

Attest:

/s/ J. L. Weller
Assistant Secretary

[fol. 4034] Exhibit II

Trans World Airlines, Inc. March 2, 1951
Kansas City
Missouri

Gentlemen:

We understand that you have entered into a contract, dated May 31, 1949, with Lockheed Aircraft Corporation, referred to as Contract No. LD-60 which, as amended by Change Order No. 1, related originally to the purchase by you of twenty Lockheed Model 749A airplanes of the Constellation type. We also understand that by further amendment to Contract No. LD-60, pursuant to Change Order No. 9, you have contracted to purchase from Lockheed Aircraft Corporation six additional Lockheed Model 749A airplanes. This will confirm our agreement with respect to one airplane of the six additional Lockheed Model 749A airplanes undelivered on the date hereof (such one airplane being hereinafter referred to as "the Airplane"), which you have contracted to purchase pursuant to Change Order No. 9.

We agree to purchase, and you agree to sell and transfer, all your right, title and interest in and to the Airplane upon the following terms and conditions:

(1) The airplane shall be the sixth of said six additional airplanes and scheduled for delivery on or before August 31, 1951; provided, however, that if you should subsequently wish to designate one of the six additional airplanes other than the sixth in substitution for the sixth, we will not unreasonably withhold our consent and agreement to such substitution. The Airplane shall be subject to change orders heretofore and hereafter agreed upon between yourselves and Lockheed Aircraft Corporation, it being agreed that the Airplane is to be substantially similar to the other 5 of said 6 additional Lockheed Model 749A Airplanes, but you shall use your best efforts to obtain the agreement of Lockheed Aircraft Corporation to any special changes we may reasonably request with respect to the Airplane.

(2) During manufacture of said six additional airplanes, you shall perform the same functions of inspection, plant

representation, and general contract administration without distinction as among said six additional airplanes; i.e., on the same basis and to the same standards with respect to the Airplane as apply to the other five airplanes which are for your own account.

(3) Upon your receipt of notice from Lockheed Aircraft Corporation of the date they expect the Airplane to be ready for flight tests, you shall notify us thereof, and as promptly as possible thereafter you shall advise us of the amount of the balance of purchase price due to Lockheed Aircraft Corporation upon delivery. We shall promptly put you in funds to pay such balance of purchase price, and we hereby authorize you to pay such balance of purchase price to Lockheed Aircraft Corporation against delivery of the Airplane, and in our name and on our behalf to accept delivery of the Airplane and execute all instruments and take all steps appropriate to the end that delivery of the Airplane for our account be effected at Las Vegas, Nevada, [fol. 4035] upon the basis set out in your contract with Lockheed Aircraft Corporation, with title vesting in us and with all risk and expense for our account, and following delivery to ferry the Airplane to such other point within the United States as we may request.

(4) We shall pay as the purchase price for the Airplane the purchase price which you are obligated to pay Lockheed Aircraft Corporation and which is properly allocable to the Airplane, such payment to be made as follows:

(a) Forthwith upon fulfillment of the conditions set forth at paragraph 8 hereof, we shall reimburse you for the installment of the purchase price of the Airplane which you have theretofore made to Lockheed Aircraft Corporation, with interest thereon from the date you paid such installment to the date of such reimbursement at the rate of 3% per annum.

(b) Upon notice from you, we shall forthwith put you in funds to meet when due the installment of the purchase price of the Airplane which becomes due subsequent to fulfillment of the conditions set forth in paragraph 8 hereof, and shall further pay you any ad-

ditional sums due you on account of the purchase price of the Airplane.

(5) In addition to the purchase price of the Airplane we shall pay you, following fulfillment of the conditions set forth in paragraph 8 hereof and as the sums become ascertained in normal course:

(a) Such sums, if any, as you may be required to pay to Lockheed Aircraft Corporation with respect to the Airplane as an adjustment of the purchase price thereof, pursuant to the contract between yourselves and Lockheed Aircraft Corporation, including without limitation adjustments due to change orders.

(b) Such sums, if any, as are represented by any sales or use tax imposed upon or paid by you by reason of the sale or use of the Airplane or the purchase by us hereunder.

(c) Such sums as represent, under sound accounting principles, a proper allocation to the Airplane of its proportionate share of the general expenses heretofore and hereafter incurred by you in negotiating your general contractual arrangements with Lockheed Aircraft Corporation, and the performance of functions of inspection, plant representation, and general contract administration, plus the total of such sums, if any, as represent direct out-of-pocket costs and expenses to you solely on account of, and attributable to, the Airplane and acceptance of delivery and ferrying thereof, including, without limitation, the cost and expenses incidental to your providing customer furnished equipment for the Airplane.

(6) In adjustment of the sums we are obligated to pay you, you shall credit or pay to us, as appropriate, any credits allowed or payments made to you by Lockheed Aircraft Corporation with respect to the Airplane pursuant to your [fol. 4036] contractual arrangements with Lockheed Aircraft Corporation (except to the extent such payments or credits are properly applicable to other airplanes under sound accounting practice) and you shall remit to us any

repayments by Lockheed Aircraft Corporation of installment payments with respect to the Airplane for which we have reimbursed you.

(7) Following our reimbursement to you of any installment payments you have made with respect to the Airplane, you shall, subject to any consents or waivers required by the provisions of any contractual arrangements to which you are a party, execute any instruments in the nature of assignment or to evidence subrogation which we may reasonably request in view of our interest in the Airplane and our rights and obligations hereunder. It is understood that you make no warranties whatsoever regarding the Airplane but will convey to us all your assignable rights and interests in all manufacturers' warranties and guarantees acquired by you pursuant to your agreement with Lockheed Aircraft Corporation.

(8) This Letter Agreement is subject to there having been obtained, on or before March 31, 1951 or such extension of such date as may be agreed upon in writing, any approval, consent or clearance with the C.A.B. which may be required pursuant to the Civil Aeronautics Act of 1938, as amended, and this Letter Agreement shall not be effective for any purpose unless and until such approval, consent or clearance shall have been obtained.

If the foregoing correctly sets forth the agreement between us, please execute and return the enclosed copy hereof, and this shall constitute the contract between us.

Very truly yours,

HUGHES TOOL COMPANY

By /s/ T. A. Slack
Vice President

Agreed:

TRANS WORLD AIRLINES, INC.

By /s/ Erle M. Constable
Treasurer

[fol. 4037] Exhibit C

SL/54624
March 2, 1951

Lockheed Aircraft Corporation
Burbank, California

Gentlemen:

The undersigned request your concurrence and agreement as hereafter set forth. For convenience, hereinafter you will sometimes be referred to as "Lockheed", Trans World Airlines, Inc. will sometimes be referred to as "TWA", and Hughes Tool Company will sometimes be referred to as "Hughes".

1. It is contemplated that TWA will finance through Hughes the final installment of the purchase price of four of the last five (of the total twenty-six) Lockheed Model 749A Airplanes which TWA has agreed to purchase from Lockheed pursuant to Contract No. LD-60, as amended. Incidental to such financing, it is contemplated that Hughes shall acquire title to four of said last five Airplanes for security purposes directly from Lockheed, and forthwith convey each of such four Airplanes to TWA subject and pursuant to conditional sale arrangements between Hughes and TWA. It is further contemplated that Hughes shall purchase full legal and beneficial ownership of the fifth of said last five airplanes, and TWA shall give Lockheed proper and timely notice designating such fifth airplane for this purpose.

2. It is therefore agreed, notwithstanding anything to the contrary in said Contract No. LD-60, as amended, but subject to the condition stated in paragraph 4 hereof, that with respect to each of said last five Airplanes:

a. Hughes shall pay Lockheed, in the form and at the place specified in said Contract No. LD-60, as amended, the final installment of purchase price applicable to each Airplane, payable upon Lockheed de-

livering each Airplane in accordance with said Contract No. LD-60, as amended; and payment by Hughes shall discharge the obligation of TWA to make such payment pursuant to said Contract.

b. Simultaneous with receipt of each such payment, Lockheed shall deliver to TWA, in the condition and at the place specified in said Contract (except that the fifth Airplane, referred to in paragraph 1 above, shall be delivered to Hughes, and at Las Vegas, Nevada upon proper amendment of said Contract pursuant to Article 3(b) thereof), the Airplane to whose purchase such payment is applicable, and a bill of sale duly vesting in Hughes good title to such Airplane free and clear of all encumbrances and such other appropriate documents of title as Hughes may reasonably require; and such delivery shall discharge the obligation of Lockheed to make delivery pursuant to said Contract.

c. Any representatives heretofore designated, or authorized, or who may hereafter be designated or authorized, by TWA to act or perform functions with [fol. 4038] respect to said Airplanes, including without limitation functions of inspection, delivery of payment and receipt of delivery of Airplanes and bills of sale, execution and receipt of packing sheets, and other related matters, acts, and instruments, are hereby designated and authorized by Hughes to act and perform on its behalf similar functions with respect to said Airplanes.

3. It is further agreed, notwithstanding anything to the contrary in said Contract No. LD-60, as amended, but subject to the conditions stated in paragraph 4 hereof, that:

a. With respect to each of the four Airplanes whose title Hughes acquires for security purposes, all rights and obligations pursuant to said Contract No. LD-60, as amended, whether before or after delivery (except only those relating to payment of final installment of purchase price and delivery of Airplanes and title as in

this agreement provided) shall remain rights and obligations solely between TWA and Lockheed, and shall not become rights and obligations between Hughes and Lockheed, all with the same full force and effect as would obtain but for this agreement; provided, however, that in event Hughes should repossess any or all of said four Airplanes pursuant to the conditional sale arrangements between Hughes and TWA, Hughes shall succeed to all the rights and assume all the obligations with respect to the Airplanes repossessed applicable under said Contract LD-60, as amended, and subsisting as of the date of such repossession; and all rights and obligations of Hughes in any event shall be limited and affected by all agreements, covenants, actions, consents, performances, and discharges between TWA and Lockheed with respect to said Airplanes prior to such repossession, whether before or after delivery of said Airplanes; and

b. With respect to the one of said last five Airplanes whose full legal and beneficial ownership is purchased by Hughes, all rights and obligations pursuant to said Contract No. LD-60, as amended subsisting as of the date Hughes acquires such ownership shall become rights and obligations solely between Hughes and Lockheed, and shall cease to be rights and obligations between TWA and Lockheed, provided that all rights and obligations of Hughes in any event shall be limited and affected by all agreements, covenants, actions, consents, performances, discharges between TWA and Lockheed with respect to said one Airplane prior to the date Hughes acquired such ownership.

4. TWA shall have the right to nullify the application of this agreement to any or all of said five Airplanes by written notice to that effect delivered to Lockheed and Hughes at least five days prior to delivery of the Airplane to which such notice relates.

If the foregoing correctly sets forth our understanding and agreement in the premises, kindly so indicate by dating

and signing, as indicated, the two duplicates of this letter enclosed herewith and by returning one such duplicate to [fol. 4039] each of the undersigned.

Very truly yours,

HUGHES TOOL COMPANY

By

/s/ T. A. Slack
Vice President

TRANS WORLD AIRLINES, INC.

By

/s/ Erle M. Constable
Treasurer

The foregoing correctly sets forth
our understanding and agreement in
the premises.

Dated: March 21st, 1951

LOCKHEED AIRCRAFT CORPORATION

By Carl B. Squier
Vice President

[fol. 4040] Exhibit D

AGREEMENT dated April 5, 1950 between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "Hughes"), TRANSCONTINENTAL & WESTERN AIR, INC., a Delaware corporation (hereinafter called "TWA"), and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called "Equitable").

WHEREAS Hughes, as of the date hereof, is the owner of approximately 74% of the issued and outstanding capital stock of TWA; and

WHEREAS TWA proposes to borrow from banks not in excess of $10,000,000 to assist it in financing the purchase of

30 Martin 404 Airplanes (hereinafter referred to as the "Airplanes"); and

WHEREAS Equitable, as the owner of all the Debentures issued and outstanding under the Indenture dated as of December 1, 1945 entered into between TWA and The Commercial National Bank and Trust Company of New York, as Trustee, as from time to time amended (hereinafter referred to as the "Indenture"), deems it desirable that TWA acquire the Airplanes and has, co-incidentally herewith and in reliance hereon, given its consent under Section 4.26 of the Indenture to the waiver of the restrictions contained in the Indenture so as to permit TWA to purchase such Airplanes and to borrow money on the security thereof to assist it in financing such purchase;

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

1. TWA agrees that on or before December 31, 1951 it will sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, shall be at least $5,000,000.

2. Hughes agrees that it will cause TWA to perform the agreement contained in paragraph 1 hereof and that if other purchasers are not available, Hughes will, itself, buy on or before December 31, 1951, sufficient shares of the unissued capital stock of TWA to provide net proceeds to TWA from such sale, after deducting underwriting commissions and other expenses of such issuance payable by TWA, of at least $5,000,000, provided, however, that said purchase by Hughes shall be subject to the approval of the Civil Aeronautics Board, but Hughes agrees that it will and it will cause TWA to take such action as may be necessary to obtain such approval if such approval can be obtained.

3. Hughes agrees that if for any reason it is impossible for TWA to perform its obligation under paragraph 1 hereof, upon the request of Equitable, Hughes will lend to TWA said sum of $5,000,000 evidenced by a subordinated note or notes in substantially the same terms and subject to substantially the same conditions as were contained in the

Subordinated Convertible 2¾% Notes issued by TWA, pursuant to the Three-Party Agreement dated January 31, 1947 between Hughes, TWA and Equitable, provided, how-
[fol. 4041] ever, that said loan shall be subject to the approval of the Civil Aeronautics Board, but Hughes agrees that it will and it will cause TWA to take such action as may be necessary to obtain such approval if such approval can be obtained. TWA agrees that, upon the request of Equitable, it will borrow at least $5,000,000 upon such terms and conditions if such loan is made available to it. Equitable hereby agrees to waive the restrictions contained in the Indenture so as to permit such borrowing by TWA.

WITNESS the due execution hereof in several counterparts.

HUGHES TOOL COMPANY

By /s/ Noah Dietrich
V.P.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

By /s/ Henry Greaves
Treasurer

TRANSCONTINENTAL & WESTERN AIR, INC.

By /s/ A. V. Leslie
Vice President and Treasurer

[fol. 4042] Exhibit E

AGREEMENT dated January 16, 1951 between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "Hughes"), TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called "TWA") and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called "Equitable").

WHEREAS Hughes, as of the date hereof, is the owner of approximately 74% of the issued and outstanding capital stock of TWA; and

WHEREAS TWA proposes to borrow from banks not in excess of Ten Million Dollars ($10,000,000) to assist it in financing the purchase of 10 Lockheed Model 1049 Constellation Airplanes and spare parts for use in connection therewith (hereinafter referred to as the "Airplanes"); and

WHEREAS Equitable, as the owner of all the Debentures issued and outstanding under the Indenture dated as of Dec. 1, 1945, entered into between TWA and The Commercial National Bank and Trust Company of New York, as Trustee, as from time to time amended (hereinafter referred to as the "Indenture"), deems it desirable that TWA acquire the Airplanes and has, co-incidentally herewith and in reliance hereon, given its consent to the execution of a supplemental indenture to the Indenture so as to permit TWA to purchase such Airplanes and to borrow money on the security thereof to assist it in financing such purchase; and

WHEREAS the parties hereto have entered into an agreement dated Apr. 5, 1950, pursuant to which TWA agreed that on or before Dec. 31, 1951, it would sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 (hereinafter referred to as the "1950 Agreement");

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

1. Without in any way affecting the obligations of TWA and Hughes under the 1950 Agreement, TWA agrees that on or before Dec. 31, 1952, it will sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such sales payable by it, shall be at least $5,000,000.

2. Hughes agrees that it will cause TWA to perform the agreement contained in paragraph 1 hereof and that if such shares are not otherwise sold, it will, itself, buy on or before

Dec. 31, 1952, sufficient shares of the unissued capital stock of TWA to provide net proceeds to TWA from such sale, after deducting underwriting commissions and other expenses of such issuance payable by TWA, which together with the net proceeds from any other sales of the unissued capital stock of TWA made subsequent to the date hereof (excluding net proceeds of $5,000,000 from sales made to satisfy the requirements of the 1950 agreement), shall aggregate at least $5,000,000.

[fol. 4043] 3. The parties hereto agree that Hughes may satisfy its obligation hereunder by lending to TWA on or before Dec. 31, 1952, said sum of $5,000,000 (or if the obligation of TWA under paragraph 1 hereof has been performed in part, a sum equivalent to the net proceeds of the shares of stock which Hughes would otherwise be obligated to purchase pursuant to paragraph 2 hereof), evidenced by a subordinated note or notes in substantially the same terms and subject to substantially the same conditions as were contained in the Subordinated Convertible 2¾% Notes issued by TWA, pursuant to the Three-Party Agreement dated Jan. 31, 1947, between Hughes, TWA, and Equitable.

4. All obligations of Hughes herein set forth are subject to any approval of the Civil Aeronautics Board which may be required by law but Hughes and TWA agree to take all reasonable steps to obtain any such required approval.

WITNESS the due execution hereof in several counterparts.

HUGHES TOOL COMPANY

By /s/ Noah Dietrich
Executive Vice President

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

By /s/ F. A. Shailer

TRANS WORLD AIRLINES, INC.

By /s/ Erle M. Constable
Treasurer

[fol. 4044]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

[Stamp—Received, Docket Section—Mar. 25, 11:58 AM, '54—Civil Aeronautics Board]

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF PURCHASE OF THREE CONSTELLATION AIRPLANES

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.,
806 Connecticut Ave., N.W.,
Washington 6, D. C.

—and—

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4045]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF PURCHASE OF THREE CONSTELLATION AIRPLANES

TRANS WORLD AIRLINES, INC., a Delaware corporation (herein referred to as "TWA"), respectfully moves that the Board enter an order herein approving the proposed financing by TWA through Hughes Tool Company (herein referred to as "Hughes"), of the purchase price of three Lockheed Constellation Airplanes (to be purchased from Delta Air Lines, Inc.) by means of a conditional sale contract to be dated as of April 1, 1954 between TWA and Hughes, in the form attached hereto as Exhibit A; and that the Board modify its order approving the acquisition by Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, so as to permit the performance of such transactions and agreements.

In support of such motion, TWA shows to the Board:

1. By an agreement in the form attached hereto as Exhibit A, Hughes will agree to sell, on a conditional sale basis, and TWA will agree to purchase, subject to the [fol. 4046] approval herein requested and to the other conditions set forth in such agreement, the three Constellation airplanes above referred to at the cost of said airplanes to Hughes, all as more particularly set forth in such agreement.

2. These airplanes are to be acquired by Hughes from Delta Air Lines, Inc. (herein referred to as "Delta") pursuant to an agreement dated March 23, 1954, to be executed by Hughes and Delta, a copy of which is attached hereto as Exhibit B. Hughes will take title to these three airplanes and sell them to TWA on a conditional sale basis solely for the purpose of enabling TWA to finance the acquisition of such airplanes and thus to increase its fleet of Constellation aircraft.

3. The terms and conditions of sale by Hughes to TWA are substantially the same as those contained in the agreement dated as of February 2, 1950 between Hughes and TWA relating to the sale from Hughes to TWA of six Constellation Model 049 Airplanes on a conditional sale basis, which was approved by Board Order No. E-4160, and as those contained in the conditional sale contract dated as of March 2, 1951 between Hughes and TWA relating to the sale from Hughes to TWA of four Constellation Model 749A Airplanes on a conditional sale basis, which was approved by Board Order No. E-5324. The details of the arrangements between the parties are more specifically set forth in the form of conditional sale contract, a copy of which is attached as Exhibit A.

[fol. 4047] 4. TWA is to pay Hughes for these airplanes only the amounts which Hughes pays to Delta, with interest on the unpaid balance as provided in the conditional sale contract. By selling these airplanes to TWA on a conditional sale basis on the terms outlined in Exhibit A, Hughes will provide TWA with financial arrangements on better terms than would otherwise be available. Under the bank Credit Agreement which TWA has arranged for the financing of the 20 Constellation Model 1049E aircraft and certain spare parts which it has contracted to purchase from Lockheed Aircraft Corporation, TWA will pay interest at the rate of 4% per annum and will pay at least 40% of the purchase price of the Constellation 1049E airplanes and spare parts from its own funds. Interest payable to Hughes is 3¾% per annum and the initial payment required is less than 2% of the purchase price.

5. These three airplanes are required by TWA for use in its domestic and international operations. The addition of these planes to TWA's present fleet will permit increased Constellation service and increased revenue mileage and will thus improve TWA's service to the public.

WHEREFORE, TWA respectfully moves the Board to enter an order herein approving the financing by Hughes of three Lockheed Constellation Airplanes, including the conditional sale of such Airplanes by Hughes to TWA, all as hereinabove set forth; and that the Board modify its order approving the acquisition by Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, [fol. 4048] so as to permit the performance of such transactions and agreements, and for such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By G. V. LESLIE
Vice-President—Finance

March 24, 1954

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4049] Exhibit A

CONDITIONAL SALE CONTRACT

Contract of Conditional Sale made as of the 1st day of April, 1954, between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called the "Seller"), with its principal place of business at Houston, Texas, and TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter sometimes called the "Buyer"), with its principal place of business at Kansas City, Missouri,

THE INTEREST OF THE SELLER IN THE AIRCRAFT AND EQUIPMENT COVERED HEREBY IS THAT OF A CONDITIONAL SELLER AND THE INTEREST OF THE BUYER THEREIN IS THAT OF A CONDITIONAL BUYER.

WITNESSETH:

WHEREAS, Hughes has contracted to purchase from Delta Air Lines, Inc. (hereinafter called "Delta") the three Lockheed Constellation airplanes (hereinafter called the "Airplanes") identified as follows:

Type	C.A.A. Registration No.	Mfg. Serial No.
L-649A	N 86521	2642
L-649A	N 86522	2653
L-749A	N 86535	2673

; and

WHEREAS, Hughes desires to sell and TWA desires to buy the Airplanes pursuant to the conditional sale arrangements set forth herein,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the Airplanes upon the terms and conditions hereinafter set forth.

2. Simultaneously upon conveyance of title to each Airplane from Delta to Seller, such Airplane shall forthwith be delivered to Buyer and Buyer shall accept such delivery at Midway Airport, Chicago, Illinois.

3. The purchase price of each Airplane for purposes of this Contract shall be the amount which Seller shall have paid Delta for such Airplane, and such purchase price shall be paid by Buyer to Seller in sixty equal consecutive monthly installments, together with interest on the unpaid [fol. 4050] balance at the rate of three and three-quarters percent (3¾%) per annum. The first of such payments relating to each Airplane shall be made at the time of de-

livery of such Airplane, the next payment shall be made on the first day of the month next following the month in which the Airplane is delivered and one of the remaining payments shall be made on the first day of each month thereafter until the whole of such purchase price shall have been paid. All payments shall be made to the Seller at the Hughes Tool Company, Houston, Texas.

4. Title to the Airplanes shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes shall pass to Buyer.

5. Upon the happening of any one or more of the following events, namely:

(a) default in making any payment, in the manner herein specified, of any monthly installment of the purchase price of the Airplanes and such default shall continue unremedied for five (5) days after written notice thereof shall have been delivered by Seller to Buyer; or

(b) default shall be made by the Buyer in the observance or performance by the Buyer of any other covenant or agreement contained herein, and such default shall continue unremedied for thirty (30) days after written notice thereof shall have been delivered by Seller to Buyer; or

(c) the Buyer shall become insolvent, or shall file a voluntary petition in bankruptcy, or shall file a voluntary petition or answer seeking or consenting to reorganization pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee of or for it or a substantial part of its property; or

(d) an order shall be entered pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors approving a petition seeking a reorganization of, or if an order shall be entered appointing a receiver or trustee of, or for any substantial part of the property of, or if a warrant of attachment shall be issued against any substantial part of the property of, the Buyer, and any such order is not dismissed or stayed within sixty (60) days from its entry or such attachment is not dismissed or bonded within thirty (30) days from its levy; or

[fol. 4051] (e) the Debentures at the time issued and outstanding under that certain Indenture, dated as of December 1, 1945, between Buyer and Bankers Trust Company, as Successor Trustee, as said Indenture may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Debentures as set forth therein, upon the occurrence of any of the "events of default" described in said Indenture, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof);

then Seller may at once (or at any later time) proceed to take possession of the Airplanes in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes may be and take possession thereof and remove the same. Seller may resell the Airplanes, so retaken, at public or private sale, with or without having the Airplanes at the place of sale, and upon such terms and in such manner as Seller may determine. Notice of the intention of Seller to so sell the Airplanes shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes, including any reasonable attorneys' fee incurred. The bal-

ance of such proceeds shall be applied to the payment of all sums owing to Seller under this agreement and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the purchase price of any Airplane falling due after Seller has taken possession of such Airplane pursuant to this provision.

6. From and after delivery of the Airplanes to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes,

(1) Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

(2) Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller, as their interests may appear, in an amount at least sufficient to cover the then unpaid portion of the purchase price of the Airplanes. If any such Airplane shall be lost, destroyed or damaged to such an extent that repair thereof is imprac- [fol. 4052] tical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Upon such payment to the Seller of insurance to the extent of the unpaid balance of the purchase price of any Airplane, absolute title to the Airplane so damaged or to any parts of the Airplane so destroyed shall vest in Buyer and Seller shall deliver to Buyer such proper documents of title with respect thereto as Buyer may reasonably require. Buyer shall be under no obligation to make

any payments on account of the purchase price of such Airplane falling due after such loss, destruction or damage. Any insurance proceeds in excess of the amount payable to the Seller, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

7. Buyer may at any time pay to Seller the unpaid balance of the purchase price of the Airplanes, or any part thereof, without premium or penalty.

8. Upon the payment to Seller of the balance of the purchase price of the Airplanes together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate (1) a bill of sale duly vesting in Buyer the title to the Airplanes free and clear of all liens, claims, charges and encumbrances attaching subsequent to the delivery of the Airplanes to Seller and not arising out of the possession, use or operation of the Airplanes by Buyer, and (2) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

9. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes or the purchase thereof by Seller, then in addition to the sales price provided for in paragraph 3, Buyer shall pay to Seller the amount thereof, upon demand.

10. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower.

11. The Buyer agrees that it will pay and discharge all taxes, assessments, governmental charges and all charges for keep, repairs, storage, maintenance or accessories, which if unpaid might become a lien, charge or encumbrance upon or against any of the Airplanes; and upon the failure of the Buyer so to do the Seller may make any

such payment; provided, however, that nothing herein contained shall require the Buyer to pay s ch tax, assessment or charge so long as the Buyer shall in good faith [fol. 4053] contest the validity thereof and shall furnish the Seller such bond or indemnity as the Seller shall require, unless, in the judgment of the Seller, forfeiture is likely to result from any such failure to pay. Any sum or sums so paid by the Seller, together with interest thereon at the highest lawful contract rate, shall be and become a part of the sum which the Buyer is required to pay under this contract, and shall immediately, without demand, be due and be repaid by the Buyer to the Seller.

The Buyer will, upon written request from the Seller, (1) reimburse the Seller for all filing or recording fees incurred in connection with filing or recording or refiling or re-recording this contract and all supplements and additions hereto, if any; (2) execute and deliver to the Seller all such further documents and instruments and do such further acts as may be necessary to perfect the rights of the Seller herein contemplated; and (3) furnish to the Seller at reasonable intervals reports and certificates setting forth all the information necessary to inform the Seller as to the continued existence, location and condition of the Airplanes. The Seller shall also have the right to inspect the Airplanes at all times when the same are not in use and when such inspection can be had without undue inconvenience or expense to the Buyer.

12. Buyer agrees to maintain the Airplanes in good repair and working condition at its own expense, except any airplane lost, destroyed or so damaged that insurance with respect thereto is payable to the Seller pursuant to paragraph 6 hereof. Subject to the proper performance of such covenant, the Buyer may make repairs and replacements to the Airplanes and may substitute for engines, propellers and any other equipment installed in or attached to the Airplanes, engines, propellers or other equipment of substantially the same kind and value. In case of any such substitution title to the equipment substituted shall immediately be vested in Seller and shall become subject to the provisions of this Conditional Sale Contract while

title to the equipment for which such substitution has been made will immediately vest in Buyer.

13. Until title to the Airplanes shall have passed to the Buyer hereunder, the Buyer shall have no right, power or authority to sell, transfer, assign, mortgage or encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof (except as provided in paragraph 12 hereof) or any interest therein, and the Buyer hereby agrees that, except as permitted by paragraph 12 hereof, the Buyer will not (voluntarily or involuntarily), sell, transfer, mortgage, encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof or any interest therein. Buyer agrees, except as provided herein, that the Airplanes will be used exclusively for its commercial air transport operations and related activities and that it will not permit the Airplanes to be used or possessed by others. Buyer may permit the use of the Airplanes by other airlines with which Buyer enters into interchange agreements provided that any such use by other airlines shall for the purposes of this agreement be considered to be use by the Buyer.

[fol. 4054] 14. To the extent, if any, that there is a conflict between any of the provisions of this agreement and any of the provisions of the Chattel Mortgages dated as of August 4, 1949, October 29, 1951 and May 13, 1952 between the Buyer and Mellon National Bank & Trust Company, as Trustee, or of the chattel mortgage contemplated by the Credit Agreement dated as of September 25, 1953 between the Buyer and Mellon National Bank and Trust Company, as Agent, and the Lending Banks named therein, the provisions of such chattel mortgages shall prevail and the provisions of this agreement shall be deemed amended to the extent necessary to avoid such conflict.

15. Before delivery of each Airplane to Buyer hereunder, Buyer will cause to be fastened thereon in a location reasonably adjacent to, and not less prominent than that of, the airworthiness certificate for such Airplane, a name plate no larger than four inches by seven inches bearing the following legend:

"Hughes Tool Company holds legal title to this Airplane as Conditional Seller."

Buyer shall maintain such name plate in such location or in one of at least equal prominence and visibility at all times. Buyer may affix to the Airplanes Buyer's name, insignia or other legends customarily displayed by Buyer on its airplanes.

16. Buyer shall indemnify and hold harmless Seller, its agents and its employees from any and all liability for losses, expenses, damages, demands and claims in connection with or arising out of any death of, or injury or alleged injury or damage to, persons or property sustained, or alleged to have been sustained, in connection with or arising or alleged to have arisen out of Buyer's possession, use or operation of the Airplanes and Buyer agrees to handle any claim and defend any suit or action brought against Seller, its agents or its employees, or any of them, based on any such death, injury or damage, or alleged injury or damage, and to pay all damages, costs and expenses, including attorneys' fees, in connection therewith or resulting therefrom.

Buyer's liability to Seller under this paragraph 16 is conditioned upon Seller's promptly giving notice to Buyer of institution of such suit or action or of receipt of such claim or demand. Buyer shall have the option at any time to conduct negotiations with the party or parties making any such claim or demand, and may intervene in any such suit or action. Whether or not Buyer intervenes in any such suit or action, it shall be entitled to assume, conduct or control the defense thereof, and Seller shall not settle or discharge any such claim, demand, suit, action or judgment without prior notice to and the consent of Buyer.

17. This Contract shall, without liability of either Buyer or Seller to the other, be and become null and void and of no force or effect if on or before April 1, 1954, or such [fol. 4055] extension of said date as Buyer and Seller may hereafter mutually agree upon in writing, the Civil Aeronautics Board (1) shall not have authorized the transactions contemplated hereby and (2) shall not have granted any approval that may be required for the purchase of the Airplanes by Hughes from Delta.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the day and year first above written.

HUGHES TOOL COMPANY

By .....
(Corporate Seal)

Attest:

.....

TRANS WORLD AIRLINES, INC.

By .....
(Corporate Seal)

Attest:

.....

[fol. 4056]

Exhibit B

March 23, 1954

Hughes Tool Company,
Houston,
Texas.

Dear Sirs:

The following is in confirmation of our agreement with respect to the purchase by you (Hughes) from us (Delta) of three Lockheed Constellation airplanes powered with four Wright Model 749 CD-BD-1 type engines:

1. We agree to sell to you and you agree to purchase from us the following Lockheed Constellation airplanes:

Type	Delta Co. No.	C.A.A. Registration No.	Mfg. Serial No.
L-649A	521	N 86521	2642
L-649A	522	N 86522	2653
L-749A	535	N 86535	2673

All such airplanes shall be delivered to you, at Midway Airport, Chicago, Illinois. Delta will assume all risk of damage to or destruction of such aircraft prior to delivery to Hughes. Delivery of such airplanes shall be made in accordance with the following schedule:

Mfg. Serial No.	Date
2642	April 1, 1954
2673	April 25, 1954
2653	June 1, 1954

2. It is understood and agreed that each of said airplanes shall be delivered to Hughes in an "as is" condition, it being understood that each airplane when delivered shall be clean and in good operating condition, all in accordance with airline operating standards, but this shall not require any periodic overhaul work prior to the delivery of the airplane. Each airplane shall be licensed for commercial operations with the necessary Civil Aeronautics Authority certificate of airworthiness under transport category of the Civil Air Regulations immediately prior to the delivery of such airplane by Delta to Hughes. Each airplane shall have all necessary equipment (including auto-pilot, radio and galley but excluding emergency equipment for overseas operation) as shall have been standard on said airplane when operated by Delta in regularly scheduled passenger operations. Except as specifically [fol. 4057] set forth in this paragraph, nothing herein contained shall be construed to warrant, impliedly or otherwise, any of the aircraft, engines or component parts thereof against any structural defects or mechanical malfunctioning. Should any of the airplanes to be sold hereunder have suffered any material damage since March 1, 1954 and prior to delivery thereof hereunder, then Delta will promptly advise Hughes whether it will repair such aircraft and tender it for delivery or whether it will cancel the agreement to deliver such aircraft pursuant to the provisions of paragraph 6 hereof. If delivery of such airplane shall, as a result of any such

repair by Delta, be delayed more than 60 days beyond the scheduled delivery date set forth in paragraph 1 hereof, Hughes may cancel this agreement with respect to such airplane.

3. The purchase price of each airplane as above described shall be one million, fifty thousand dollars ($1,050,000.00) or a total price for the three (3) airplanes of three million one hundred fifty thousand dollars ($3,150,000.00). The purchase price of each airplane shall be paid in cash or by certified or cashier's check on delivery of each individual airplane to Hughes.

4. At the time of delivery of each of the said airplanes to Hughes, Delta agrees to turn over to Hughes all of the maintenance and overhaul logs and records in its possession with respect to each such airplane and the engines attached. Delta also agrees that at the time of delivery of each airplane Delta will execute and deliver to Hughes appropriate instruments of sale and assignment transferring good title to the airplane to Hughes free and clear of any mortgage or other encumbrance, in form sufficient to permit recordation of clear title thereto with the Civil Aeronautics Authority, together with all manufacturer's warranties and guaranties, expressed or implied, held by Delta in connection therewith and all rights based thereon or enuring to Delta as original purchaser of said airplanes.

5. Any sales, use, gross receipts or excise tax legally assessed against Delta, by reason of the transactions provided for under this agreement shall be paid by Hughes in addition to the purchase price specified herein. If claim is made against Delta for any such tax, Delta shall immediately notify Hughes. If seasonably [fol. 4058] requested by Hughes, Delta shall not pay any such tax except under protest, and if payment be made, shall use all reasonable efforts to obtain a refund thereof. If all or any part of such tax be refunded, Delta shall repay to Hughes so much thereof as Hughes shall have paid. Hughes shall pay to Delta, upon demand, all ex-

penses incurred by Delta in protesting payment of such tax and in endeavoring to obtain such refund.

6. Delta reserves the right to cancel this agreement with respect to any one or more of the aforesaid airplanes in the event that any governmental action, accident or force majeure occurrence or other cause beyond its reasonable control renders such airplane unavailable to Delta for delivery hereunder. In the event of a partial cancellation pursuant to the provisions of this paragraph, such partial cancellation will in no wise effect the obligation of Delta to sell and deliver and the obligation of Hughes to purchase the remaining airplanes covered by this agreement. In the event that Delta should exercise its right to a partial cancellation under this paragraph, Delta shall immediately notify Hughes of such cancellation and of the reasons therefor.

7. It is understood and agreed that wherever the word "Hughes" is used herein, that phrase shall be deemed to include the assigns of Hughes, if, but only if, such assignment shall have been consented to in writing by Delta in advance, and if, but only if, Hughes shall remain primarily liable and obligated for the prompt payment of monies due and performance of the covenants herein provided to be performed by it or its assigns. Other than as hereinbefore provided, this agreement and all of its provisions shall inure to and become binding upon the executors, administrators, successors and assigns of the parties hereto.

8. This agreement supersedes and replaces in its entirety any and all prior agreements, either written or verbal, between the parties hereto or their agents or representatives.

9. This agreement shall be construed in accordance with the laws of the State of New York.

10. This agreement is expressly conditioned upon the approval by the Civil Aeronautics Board of the sale by Delta to Hughes of the three airplanes enu- [fol. 4059] merated above, if such approval shall be

required, and of the sale by Hughes to Trans World Airlines, Inc. of said airplanes.

If the foregoing conforms with our understanding, will you execute the original and duplicate original of this letter in the place indicated below and the same will constitute a contract between us.

Very truly yours,

DELTA AIR LINES, INC.

By .....

Attest:

.....

Accepted:

March , 1954

HUGHES TOOL COMPANY

By .....

Attest:

.....

[fol. 4060] Original
[Stamp—Received—Docket Section—May 2—3:17 PM—'56—Civil Aeronautics Board]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.,
806 Connecticut Ave., N.W.,
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, New York

[fol. 4061]

Before the

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (hereinafter referred to as "TWA") respectfully moves that the Board enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (hereinafter referred to as "Hughes"), so that the terms of such order will not restrict the right of TWA to exercise the following options for the purchase of aircraft, together with related engines and spare parts, and to engage in other transactions relating to the aircraft, engines and spare parts which are the subject matter of such options:

(1) An option from Hughes to TWA dated April 20, 1956, for the purchase of Lockheed 1049G aircraft, together with related engines and spare parts, a copy of which is attached hereto as Exhibit I, and which is hereinafter referred to as the "1049G option";

[fol. 4062]

(2) A second option from Hughes to TWA dated April 20, 1956, for the purchase of Lockheed 1649A aircraft, together with related engines and spare parts, a copy of which is attached hereto as Exhibit II, and which is hereinafter referred to as the "1649A option".

In support of its motion, TWA shows to the Board the following:

1. The 1049G option offers TWA the right to acquire all of the interest of Hughes in eight new Model 1049G Constellation aircraft acquired by Hughes under a Purchase Agreement between it and Lockheed Aircraft Corporation (hereinafter referred to as "Lockheed") and in spare engines and spare parts acquired by Hughes therefor. The option may be exercised by TWA at any time on or before May 31, 1956 (subject to extension under certain stated conditions).

2. If the 1049G option is exercised, the aircraft, spare engines and spare parts will be purchased by TWA pursuant to a conditional sale contract. TWA will pay Hughes as the purchase price for such aircraft, spare engines and spare parts an amount equivalent to the payments made by Hughes to Lockheed and Hughes' other direct costs incurred in connection with the acquisition of such aircraft, spare engines and spare parts, plus interest at the rate of 3% per annum on advance payments made by Hughes thereon. Such purchase price would be paid by TWA in sixty equal monthly installments with interest on the unpaid balance.

[fol. 4063]

3. The 1649A option offers TWA the right to acquire all of the interest of Hughes in twenty-five Model 1649A Constellation aircraft acquired by Hughes under a Purchase Agreement between it and Lockheed and in spare engines and spare parts acquired by Hughes therefor. The option may be exercised by TWA at any time on or before October 31, 1956 (subject to extension under certain stated conditions).

4. If the 1649A option is exercised, the aircraft, spare engines and spare parts will be purchased by TWA pursuant to a conditional sale contract. TWA will pay Hughes as the purchase price for such aircraft, spare engines and spare parts an amount equivalent to the payments made by Hughes to Lockheed and Hughes' other direct costs incurred in connection with the acquisition of such aircraft, spare engines and spare parts, plus interest at the rate of 3% per annum on advance payments made by Hughes thereon,

except that these interest payments shall be reduced by an amount equal to all interest payments received by Hughes from Lockheed under the Purchase Agreement.* Such purchase price would be paid by TWA in sixty equal monthly installments with interest on the unpaid balance.

5. By the terms of both options their exercise is made subject to the approval of the Civil Aeronautics Board. Neither option has been exercised.

[fol. 4064]

6. Prior to the exercise of the options, TWA will undertake inspection functions and will participate in the negotiation of any change orders and the purchase of any customer-furnished equipment or spares to be paid for in the first instance by Hughes, as it would if it had contracted directly with the manufacturer for the purchase of the aircraft, engines and spare parts under option.

7. The eight 1049G aircraft and the twenty-five 1649A aircraft, together with related engines and spare parts, are required for use in TWA's domestic and international operations, and TWA requests modification of the Board's order herein so that it can take advantage of the options.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying the Board's Order Serial No. 3210, as amended, so that the terms of such order will not restrict the right of TWA to exercise the options referred to above and to engage in other transactions relating to the aircraft, engines and spare parts which are the subject matter of such options, and providing such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By WARREN LEE PIERSON

Dated: May 1, 1956.

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* No interest is payable to Hughes by Lockheed under the Purchase Agreement for 1049G aircraft.

[fol. 4065]

EXHIBIT I

OPTION

THE STATE OF TEXAS :
COUNTY OF HARRIS :

KNOW ALL MEN BY THESE PRESENTS:

1. That for and in consideration of the sum of Ten Dollars ($10.00) cash and other good and valuable considerations paid by Trans World Airlines, Inc., a Delaware corporation with a principal office and place of business in Kansas City, Missouri (hereinafter called "TWA"), to Hughes Tool Company, a Delaware corporation with its principal office and place of business in Houston, Texas (hereinafter called "Tool Company"), the receipt and sufficiency of all of which consideration is hereby acknowledged by Tool Company, Tool Company has this day given and granted, and does by these presents hereby give and grant, unto TWA the exclusive right and privilege (hereinafter referred to as the "Option") to acquire from Tool Company, at the price and on the terms and conditions hereinafter set out, (1) all the interest of Tool Company in eight (8) new Model 1049G Airplanes, Lockheed Constellation type, (hereinafter called "1049G Airplanes") which may be acquired by Tool Company pursuant to that certain Purchase Agreement dated September 24, 1955 (and Change Order No. 1 thereto, executed as of October 17, 1955) between Lockheed Aircraft Corporation (hereinafter called "Lockheed"), as Seller, and Tool Company, as Buyer, including all of the rights of Tool Company under such Purchase Agreement, as amended, and under all change orders and letter agree-
[fol. 4066] ments incident thereto (which with said Purchase Agreement, as amended, are hereinafter collectively referred to as "The Purchase Agreement"), a copy of The Purchase Agreement having been heretofore furnished to counsel for TWA; (2) all the interest of Tool Company in any spare engines (having a maximum purchase price as defined in paragraph 5 of up to $726,000) that may have been or may be acquired by Tool Company for use in the

1049G Airplanes, including Tool Company's interest in any purchase agreement relating thereto; and (3) all the interest of Tool Company in any other spare parts (having a maximum purchase price as defined in paragraph 5 of up to $1,524,000) which may have been or may be acquired by Tool Company for use in connection with the 1049G Airplanes, including Tool Company's interest in any purchase agreement relating thereto. For the purposes of this Option the term "spare parts" shall include extra propeller assemblies and airframe spare parts, spare parts for airplane engines and for propeller assemblies and other accessories, flight equipment and parts for use on or in connection with the operation or maintenance of aircraft.

2. If the Option is exercised, the 1049G Airplanes, the spare engines and spare parts purchased by Tool Company will be sold by Tool Company to TWA pursuant to a conditional sale contract in substantially the form attached hereto as Exhibit A. The interest rate on the unpaid balances payable by TWA under such conditional sale contract shall be [fol. 4067] the average interest rate payable by Tool Company on any indebtedness incurred by it for the purpose of purchasing the 1049G Airplanes, the spare engines and spare parts therefor (including any indebtedness proposed to be secured by the assignment of Tool Company's interest in such conditional sale contract), or if no such indebtedness is incurred the prime commercial interest rate current in New York City at the time of the execution of such conditional sale contract.

3. TWA may exercise said Option by sending, by registered mail, a notice in writing to that effect to Tool Company addressed as follows:

Hughes Tool Company
2200 Gulf Building
Houston 2, Texas

Attention: Mr. C. H. Price

The Option may be exercised only as to all the 1049G Airplanes, spare engines and spare parts referred to in paragraph 1. Said Option may be exercised by TWA at any time

on or before May 31, 1956; provided, however, that if prior to May 31, 1956, (or prior to such later option exercise date as may be authorized by this paragraph) the scheduled delivery date for the first airplane under The Purchase Agreement has been deferred for a period beyond June 30, 1956, by reason of a good faith written agreement between Tool Company and Lockheed or by reason of a claim of such deferment asserted in writing by Lockheed and not contested [fol. 4068] in good faith by Tool Company, then in such event the option exercise date shall be deferred for an identical period of time. In the event this Option shall not have been exercised on or before the option exercise date as above determined, then this Option shall thereupon terminate, and subsequent deferments of the aforesaid delivery date shall not effect a revival of the lapsed Option.

4. The purchase price of each 1049G Airplane purchased by TWA pursuant to the option herein granted shall be the sum of the following:

(1) The amounts Tool Company shall have paid Lockheed for such airplane.

(2) All additional direct costs which are paid or incurred by Tool Company and are attributable to such airplane, including, but not limited to, costs of "customer furnished equipment" provided for in Article 18 of The Purchase Agreement. To the extent that any such costs are not specifically attributable to a particular airplane they shall be allocated equally among the airplanes at the time not delivered to TWA.

(3) An amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Tool Company applicable to such airplane. The average amount of the outstanding advance payments applicable to each airplane shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 4 as outstanding from the respective dates such [fol. 4069] payments were made or such costs were incurred by Tool Company and until the delivery of such airplane to TWA under the conditional sale contract;

(4) The assumption by TWA of all liabilities and obligations of Tool Company to Lockheed arising out of The Purchase Agreement.

5. The purchase price of the spare engines and spare parts purchased by TWA pursuant to the Option herein granted shall be the sum of the following:

(1) the total payments made therefor by Tool Company to the vendors of such spare engines or spare parts;

(2) all additional direct costs which are paid or incurred by Tool Company and are attributable to such spare engines and spare parts or to the purchase thereof;

(3) an amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Tool Company applicable to such spare engines and spare parts. The average amount of the outstanding advance payments applicable to spare engines and spare parts shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 5 as outstanding from the respective dates such payments were made or such costs were incurred and until the delivery of the first 1049G Airplane to TWA under the conditional sale contract;

[fol. 4070] (4) any additional amount which, at the time of delivery of the first 1049G Airplane to TWA, Tool Company is committed to pay to suppliers of spare engines and spare parts;

(5) the assumption by TWA of all other liabilities and obligations of Tool Company to the vendors of such spare engines and spare parts arising out of the purchase thereof.

6. In the event that the purchase price of the 1049G Airplanes differs from the amount computed at the time of the delivery thereof to TWA or in the event that the aggregate net amount which Tool Company is required to pay for the spare engines and spare parts in a final accounting with the suppliers thereof differs from the amount used in computing the purchase price thereof pursuant to paragraph 5, separate and independent adjustments will be made by pay-

ment from one party to the other of such difference. Similarly, Tool Company will reimburse TWA for any interest paid by TWA with respect to any portion of the purchase price of the spare engines and spare parts which is unpaid at the time of delivery of the first 1049G Airplane, to the extent and for the period that Tool Company has not earned such interest by having made payments to the suppliers.

7. The exercise of this Option by TWA shall be subject to the approval of the Civil Aeronautics Board or the receipt by Tool Company of an opinion of counsel for TWA [fol. 4071] that such approval is not necessary.

8. The foregoing Option is subject to the right of Tool Company, at any time prior to the exercise by TWA of this Option, to exercise any and all of Tool Company's rights and privileges under The Purchase Agreement; and nothing herein shall be construed as in any wise limiting, restricting, prohibiting, or otherwise affecting the exercise by Tool Company of its rights under The Purchase Agreement.

9. This Option shall be binding upon and inure to the benefit of Tool Company and TWA and their respective successors and assigns; provided, however, that TWA may not assign this Option without the prior written consent of Tool Company, and any attempted assignment without such consent shall, at the option of Tool Company, effect a termination of this Option.

10. This Option shall supersede the option granted by Tool Company to TWA dated November 10, 1955 relating to the 1049G Airplanes, which option is hereby revoked.

EXECUTED this 20th day of April, A.D. 1956.

HUGHES TOOL COMPANY

By /s/ RAYMOND M. HOLLIDAY
Vice President

[Corporate Seal]

ATTESTED:

/s/ C. H. PRICE
Assistant Secretary

[fol. 4072] EXHIBIT A

CONDITIONAL SALE CONTRACT

Contract of Conditional Sale made as of the day of , 1956, between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called the "Seller"), with its principal place of business at Houston, Texas, and TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter sometimes called the "Buyer"), with its principal place of business at Kansas City, Missouri,

THE INTEREST OF THE SELLER IN THE AIRCRAFT AND EQUIPMENT COVERED HEREBY IS THAT OF A CONDITIONAL SELLER AND THE INTEREST OF THE BUYER THEREIN IS THAT OF A CONDITIONAL BUYER.

WITNESSETH:

WHEREAS, Hughes has contracted to purchase from Lockheed Aircraft Corporation (hereinafter called "Lockheed") the eight (8) Model L-1049G Lockheed Constellation Airplanes identified as follows:

C.A.A. Registration No.	Mfg. Serial No.

together with the airplane engines (each of which is of 750 or more rated take-off horsepower and will be later identified by manufacturer's serial number in a supplement to this Conditional Sale Contract) installed in each thereof on the date of delivery of such airplanes to Hughes and together with the propeller assemblies and all other equipment and [fol. 4073] accessories attached to such airplanes and engines on the date of delivery of such airplanes to Hughes (hereinafter called "the Airplanes");

WHEREAS, Hughes has also contracted to purchase from various vendors extra airplane engines (each of which is of 750 or more rated take-off horsepower and will be later identified by manufacturer's serial number in a supplement to this Conditional Sale Contract) and propeller assemblies and airframe spare parts, spare parts for airplane engines and for propeller assemblies, and other accessories, flight equipment and parts, for use on or in connection with the

operation or maintenance of the Airplanes at, in or near repair or overhaul bases, airports, airfields, landing strips, hangars, warehouses, storehouses and buildings owned, operated, leased or used by Buyer at any one or more of the locations shown on Exhibit 1 annexed hereto (all of which engines, propeller assemblies, parts, accessories and equipment are hereinafter referred to as "Spares"); and

WHEREAS, Hughes desires to sell and TWA desires to buy the Airplanes and Spares pursuant to the conditional sale arrangements set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the Airplanes and Spares upon the terms and conditions hereinafter set forth.

2. (a) Simultaneously upon conveyance of title to each Airplane from Lockheed to Seller, such Airplane shall forthwith be delivered to Buyer and Buyer shall accept such delivery at Lockheed Air Terminal, Burbank, California, or at such other place to which the Airplane has been delivered to Seller by Lockheed.

[fol. 4074] (b) Seller shall deliver the Spares, or cause them to be delivered, to Buyer at Kansas City, Missouri, or such other place as may be designated by Buyer, such deliveries to be made upon delivery of the first Airplane to Buyer, or as soon thereafter as practicable, and with respect to Spares not then delivered to Seller, upon delivery of such Spares to Seller, or as soon thereafter as practicable.

3. (a) The purchase price of each Airplane for purposes of this Contract shall be the aggregate of

(1) The amounts Seller shall have paid Lockheed for such Airplane at the time of its delivery to Buyer hereunder;

(2) All additional direct costs which have been paid or incurred by Seller at the time of the delivery of such Airplane to Buyer and are attributable to such Air-

plane, including, but not limited to, costs of "customer furnished equipment". To the extent that any such costs are not specifically attributable to a particular Airplane they shall be allocated equally among the Airplanes at the time not delivered to Buyer;

(3) An amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Seller applicable to such Airplane. The average amount of the outstanding advance payments applicable to each Airplane shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 3(a) as outstanding from the respective dates such payments were made or such costs were incurred by Seller and until the delivery of such Airplane to Buyer under this Contract.

[fol. 4075] (b) The purchase price of Spares for purposes of this Contract shall be the aggregate of

(1) the total payments made therefor by Seller to the vendors of such Spares at the time of the delivery of the first Airplane to Buyer hereunder;

(2) all additional direct costs which have been paid or incurred by Seller at the time of the delivery of the first Airplane to Buyer and are attributable to such Spares or to the purchase thereof;

(3) an amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Seller applicable to such Spares. The average amount of the outstanding advance payments applicable to Spares shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 3(b) as outstanding from the respective dates such payments were made or such costs were incurred by Seller and until the delivery of the first Airplane to Buyer under this contract;

(4) any additional amount which, at the time of the delivery of the first Airplane to Buyer hereunder, Seller is committed to pay to suppliers of Spares.

(c) The purchase price of each Airplane and the purchase price of Spares shall each be paid by Buyer to Seller in sixty (60) equal consecutive monthly installments, together with interest on the unpaid balance at the rate of per cent (%) per annum. The first of such payments relating to each Airplane shall be made at the time of delivery of such Airplane, and the first of such payments relating to Spares [fol. 4076] shall be made at the time of delivery of the first Airplane. As to each Airplane, and as to Spares, the second and succeeding payments shall be made monthly on the first day of the months succeeding the month in which the first payment is required to be paid, until the whole of each such purchase price shall have been paid. All payments shall be made to the Seller at the Hughes Tool Company, Houston, Texas.

(d) In the event that the purchase price of the Airplanes differs from the amount computed at the time of the delivery thereof to Buyer hereunder or in the event that the aggregate net amount which Seller is required to pay for the Spares in a final accounting with the suppliers thereof differs from the amount used in computing the purchase price thereof pursuant to subparagraph 3(b), separate and independent adjustments will be made by payment from one party to the other of such difference. Similarly, Seller will reimburse Buyer for any interest paid by Buyer with respect to any portion of the purchase price of the Spares which is unpaid at the time of delivery of the first Airplane hereunder, to the extent and for the period that Seller has not earned such interest by having made payments to the suppliers.

4. Title to the Airplanes and Spares shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes and Spares shall pass to Buyer.

5. Upon the happening of any one or more of the following events, namely:

[fol. 4077] (a) default in making any payment, in the manner herein specified, of any monthly installment of the purchase price of the Airplanes or Spares and such default shall continue unremedied for five (5) days after written notice thereof shall have been delivered by Seller to Buyer; or

(b) default shall be made by the Buyer in the observance or performance by the Buyer of any other covenant or agreement contained herein, and such default shall continue unremedied for thirty (30) days after written notice thereof shall have been delivered by Seller to Buyer; or

(c) the Buyer shall become insolvent, or shall file a voluntary petition in bankruptcy, or shall file a voluntary petition or answer seeking or consenting to reorganization pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee of or for it or a substantial part of its property; or

(d) an order shall be entered pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors approving a petition seeking a reorganization of, or if an order shall be entered appointing a receiver or trustee of, or for any substantial part of the property of, or if a warrant of attachment shall be issued against any substantial part of the property of, the Buyer, and any such order is not dismissed or stayed within sixty (60) days from its entry or such [fol 4078] attachment is not dismissed or bonded within thirty (30) days from its levy; or

(e) the Bonds at the time issued and outstanding under that certain Indenture, dated as of December 1,

1954, between Buyer and Irving Trust Company, as Trustee, as said Indenture may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Bonds as set forth therein, upon the occurrence of any of the "events of default" described in said Indenture, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof); or

(f) the Notes at the time issued and outstanding under that certain Chattel Mortgage, dated as of December 20, 1954, between Buyer and Irving Trust Company, as Trustee, as said Chattel Mortgage may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Notes as set forth therein, upon the occurrence of any of the "events of default" described in said Chattel Mortgage, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof);

then Seller may at once (or at any later time) proceed to take possession of the Airplanes and Spares in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes or Spares may be and take possession thereof and remove the same. Seller may resell the Airplanes and Spares, so retaken, at public or private sale, with or without having such Airplanes and Spares at the place of sale, and upon such terms and in such manner as Seller may deter- [fol. 4079] mine. Notice of the intention of Seller to so sell the Airplanes and Spares shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes and Spares, including any reasonable attorneys' fees incurred. The balance of such proceeds shall be applied to the payment of all sums owing to Seller under this agreement

and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the purchase price of any Airplane or Spares falling due after Seller has taken possession of such Airplane or Spares pursuant to this provision.

6. From and after delivery of the Airplanes and Spares to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes,

(a) Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes and Spares. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

(b) Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller, as their interests may appear, in such amounts and with such companies as shall be satisfactory to Seller. [fol. 4080] If any such Airplane shall be lost, destroyed or damaged to such an extent that repair thereof is impractical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Upon such payment to the Seller of insurance to the extent of the unpaid balance of the purchase price of any Airplane, absolute title to the Airplane so damaged or to any parts of an Airplane so destroyed shall vest in Buyer and Seller shall deliver to Buyer such proper documents of title with respect thereto as Buyer may reasonably require. Buyer shall be under no obligation to make any payments on account of the purchase price of such Airplane falling due after such loss, destruction or damage. Any insurance proceeds in excess of the amount payable to the Seller, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

7. Buyer may at any time pay to Seller the unpaid balance of the purchase price of the Airplanes and Spares or any part thereof, without premium or penalty.

8. Upon the payment to Seller of the balance of the purchase price of the Airplanes and Spares together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate.

(a) a bill of sale duly vesting in Buyer the title to the Airplanes and Spares free and clear of all liens, claims, charges and encumbrances attaching subsequent to the delivery of the Airplanes and Spares to Seller and not arising [fol. 4081] out of the possession, use or operation of the Airplanes and Spares by Buyer, and

(b) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

9. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes and Spares or the purchase thereof by Seller, then in addition to the sales price provided for in paragraph 3, Buyer shall pay to Seller the amount thereof, upon demand.

10. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower.

11. The Buyer agrees that it will pay and discharge all taxes, assessments, governmental charges and all charges for keep, repairs, storage, maintenance or accessories, which if unpaid might become a lien, charge or encumbrance upon or against any of the Airplanes or Spares; and upon the failure of the Buyer so to do the Seller may make any such payment; provided, however, that nothing herein contained shall require the Buyer to pay such tax, assessment or charge so long as the Buyer shall in good faith contest the validity thereof and shall furnish the

Seller such bond or indemnity as the Seller shall require, unless, in the judgment of the Seller, forfeiture is likely to result from any such failure to pay. Any sum or sums so paid by the Seller, together with interest thereon at the highest lawful contract rate, shall be and become a part [fol. 4082] of the sum which the Buyer is required to pay under this Contract, and shall immediately, without demand, be due and be repaid by the Buyer to the Seller.

The Buyer will, upon written request from the Seller,

(a) reimburse the Seller for all filing or recording fees incurred in connection with filing or recording or refiling or re-recording this Contract and all supplements and additions hereo, if any;

(b) execute and deliver to the Seller all such further documents and instruments and do such further acts as may be necessary to perfect the rights of the Seller herein contemplated; and

(c) furnish to the Seller at reasonable intervals reports and certificates setting forth all the information necessary to inform the Seller as to the continued existence, location and condition of the Airplanes and Spares. The Seller shall also have the right to inspect the Airplanes and Spares at all times when the same are not in use and when such inspection can be had without undue inconvenience or expense to the Buyer.

12. Buyer agrees to maintain the Airplanes and Spares in good repair and working condition at its own expense, except any airplane lost, destroyed or so damaged that insurance with respect thereto is payable to the Seller pursuant to paragraph 6 hereof. Subject to the proper performance of such covenant, the Buyer may make repairs and replacements to the Airplanes and Spares and may substitute for engines, propellers and any other equipment installed in or attached to the Airplanes or Spares, engines, propellers or other equipment of substantially [fol. 4083] the same kind and value; provided, however, that no removal of any such engines, propellers, or equipment, and no replacement thereof, shall divest Seller of its superior title thereto, or render any such removed

or replaced equipment subject to the lien or claim of any person other than Seller, UNLESS and UNTIL such equipment is replaced by equipment of substantially the same kind and value, the title to which upon such equipment being installed in or attached to the Airplanes or Spares, may validly vest in Seller free and clear of the lien or claim of any other person, subject to the provisions of paragraph 14 hereof. In the case of any such permitted substitution, title to the substituted equipment shall immediately vest in Seller and become subject to the provisions of this Conditional Sale Contract and remain so vested and so subject unless and until substituted for in the manner hereinabove permitted; and title to the equipment substituted for shall vest in Buyer.

13. Until title to the Airplanes and Spares shall have passed to the Buyer hereunder, the Buyer shall have no right, power or authority to sell, transfer, assign, mortgage or encumber or in any other manner whatsoever dispose of the Airplanes and Spares or any part thereof (except as provided in paragraph 12 hereof) or any interest therein, and the Buyer hereby agrees that, except as permitted by paragraph 12 hereof, the Buyer will not (voluntarily or involuntarily) sell, transfer, mortgage, encumber or in any other manner whatsoever dispose of the Airplanes and Spares or any part thereof or any interest therein. Buyer agrees, except as provided herein, that the Airplanes and Spares will be used exclusively for its commercial air transport operations and related activities [fol. 4084] and that it will not permit the Airplanes and Spares to be used or possessed by others. Buyer may permit the use of the Airplanes and Spares by other airlines with which Buyer enters into interchange agreements provided that any such use by other airlines shall for the purposes of this agreement be considered to be use by the Buyer.

14. To the extent, if any, that there is a conflict between any of the provisions of this agreement and any of the provisions of the Indenture of Mortgage dated as of December 1, 1954 between the Buyer and Irving Trust Company, as Trustee, or of the Chattel Mortgage dated

as of December 20, 1954 between the Buyer and Irving Trust Company, as Trustee, the provisions of said Indenture and said Chattel Mortgage shall prevail and the provisions of this agreement shall be deemed amended to the extent necessary to avoid such conflict. Seller recognizes the liens created by (a) Granting Clause VI of said Indenture and (b) Granting Clause III of said Chattel Mortgage as prior liens on the aircraft engines and on the propellers, appliances and spare parts relating to the Airplanes or Spares when and so long as they shall be installed in, attached to or incorporated in any of the aircraft or aircraft engines at any time subject to the lien of said Indenture or of said Chattel Mortgage, as the case may be.

Seller agrees that so long as all the Bonds issued under said Indenture at the time outstanding shall be held by the original purchaser thereof, (a) Seller will not repossess the Airplanes or Spares, in the event of a default by Buyer under this agreement, without affording such original purchaser reasonable notice of such default and a reasonable opportunity to remedy the same and (b) such [fol. 4085] original purchaser shall have the right, at its option, to purchase at any time all the interest of Seller hereunder by paying to Seller the then remaining balance of the purchase price hereunder plus accrued interest.

Seller also agrees that in the event of a default by Buyer hereunder, the rights and remedies of Seller shall be limited to repossession of the Airplanes and Spares.

15. Before delivery of each Airplane to Buyer hereunder, Buyer will cause to be fastened thereon in a location reasonably adjacent to, and not less prominent than that of, the airworthiness certificate for such Airplane, a name plate no larger than four inches by seven inches (4" x 7") bearing the following legend:

> "Hughes Tool Company holds legal title to this Airplane as Conditional Seller."

Buyer shall maintain such name plate in such location or in one of at least equal prominence and visibility at all times. Buyer may affix to the Airplanes Buyer's name, insignia or other legends customarily displayed by Buyer on its airplanes.

16. Buyer shall indemnify and hold harmless Seller, its agents and its employees from any and all liability for losses, expenses, damages, demands and claims in connection with or arising out of any death of, or injury or alleged injury or damage to, persons or property sustained, or alleged to have been sustained, in connection with or arising or alleged to have arisen out of Buyer's possession, use or operation of the Airplanes or Spares and Buyer agrees to handle any claim and defend any suit or action brought against Seller, its agents or its employees, or any of them, based on any such death, injury or damage, or alleged injury or damage, and to pay all damages, costs, [fol. 4086] and expenses, including attorneys' fees, in connection therewith or resulting therefrom.

Buyer's liability to Seller under this paragraph 16 is conditioned upon Seller's promptly giving notice to Buyer of institution of such suit or action or of receipt of such claim or demand. Buyer shall have the option at any time to conduct negotiations with the party or parties making any such claim or demand, and may intervene in any such suit or action. Whether or not Buyer intervenes in any such suit or action, it shall be entitled to assume, conduct or control the defense thereof, and Seller shall not settle or discharge any such claim, demand, suit, action or judgment without prior notice to and the consent of Buyer.

In Witness Whereof, the parties hereto have executed and delivered this agreement as of the day and year first above written.

Hughes Tool Company

By .....
Vice President

Attest:

.....
Assistant Secretary

Trans World Airlines, Inc.

By .....
Vice President—Finance

Attest:

.....
Assistant Secretary

[fol. 4087]

STATE OF)
: ss.:
COUNTY OF)

On this day of , 195 , before me personally appeared , to me personally known, who, being by me duly sworn, did depose and say that he is of HUGHES TOOL COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument bearing the corporate name of said corporation is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Given under my hand and official seal the day and year above written.

.....
Notary Public

(Notarial Seal)

[fol. 4088]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this day of , 195 , before me personally appeared , to me personally known, who, being by me duly sworn, did depose and say that he is of TRANS WORLD AIRLINES, INC., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument bearing the corporate name of said corporation is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Given under my hand and official seal the day and year above written.

.....
Notary Public .

(Notarial Seal)

[fol. 4089] EXHIBIT II

OPTION

THE STATE OF TEXAS :
COUNTY OF HARRIS :

KNOW ALL MEN BY THESE PRESENTS:

1. That for and in consideration of the sum of Ten Dollars ($10.00) cash and other good and valuable considerations paid by Trans World Airlines, Inc., a Delaware corporation with a principal office and place of business in Kansas City, Missouri (hereinafter called "TWA"), to Hughes Tool Company, a Delaware corporation with its principal office and place of business in Houston, Texas (hereinafter called "Tool Company"), the receipt and sufficiency of all of which consideration is hereby acknowledged by Tool Company, Tool Company has this day given and granted, and does by these presents hereby give and grant, unto TWA the exclusive right and privilege (hereinafter referred to as the "Option") to acquire from Tool Company, at the price and on the terms and conditions hereinafter set out, (1) all the interest of Tool Company in twenty-five (25) new Model 1649A Airplanes, Lockheed Constellation type, (hereinafter called "1649A Airplanes") which may be acquired by Tool Company pursuant to that certain Purchase Agreement dated December 23, 1954 between Lockheed Aircraft Corporation (hereinafter called "Lockheed"), as Seller, and Tool Company, as Buyer, including all of the rights of Tool Company under such Purchase Agreement, as amended, and under all change orders and letter agreements incident thereto (which with said Purchase Agreement, as amended, are [fol. 4090] hereinafter collectively referred to as "The Purchase Agreement"), a copy of The Purchase Agreement having been heretofore furnished to counsel for TWA; (2) all the interest of Tool Company in any spare engines (having a maximum purchase price as defined in paragraph 5 of up to $5,300,000) that may have been or may be acquired by Tool Company for use in the 1649A Airplanes, including Tool Company's interest in any purchase agreement relating thereto; and (3) all the interest of Tool Company in

any other spare parts (having a maximum purchase price as defined in paragraph 5 of up to $5,700,000) which may have been or may be acquired by Tool Company for use in connection with the 1649A Airplanes, including Tool Company's interest in any purchase agreement relating thereto. For the purposes of this Option the term "spare parts" shall include extra propeller assemblies and airframe spare parts, spare parts for airplane engines and for propeller assemblies and other accessories, flight equipment and parts for use on or in connection with the operation or maintenance of aircraft.

2. If the Option is exercised, the 1649A Airplanes, the spare engines and spare parts purchased by Tool Company will be sold by Tool Company to TWA pursuant to a conditional sale contract in substantially the form attached hereto as Exhibit A. The interest rate on the unpaid balances payable by TWA under such conditional sale contract shall be the average interest rate payable by Tool Company on any indebtedness incurred by it for the purpose of pur- [fol. 4091] chasing 1649A Airplanes, the spare engines and spare parts therefor (including any indebtedness proposed to be secured by the assignment of Tool Company's interest in such conditional sale contract), or if no such indebtedness is incurred, the prime commercial interest rate current in New York City at the time of the execution of such conditional sale contract.

3. TWA may exercise said Option by sending, by registered mail, a notice in writing to that effect to Tool Company addressed as follows:

Hughes Tool Company
2200 Gulf Building
Houston 2, Texas

Attention: Mr. C. H. Price

The Option may be exercised only as to all the 1649A Airplanes, spare engines and spare parts referred to in paragraph 1. Said Option may be exercised by TWA at any time on or before October 31, 1956; provided, however, that if prior to October 31, 1956, (or prior to such later option

exercise date as may be authorized by this paragraph) the scheduled delivery date for the first airplane under The Purchase Agreement has been deferred for a period beyond April 30, 1957, by reason of a good faith written agreement between Tool Company and Lockheed or by reason of a claim of such deferment asserted in writing by Lockheed and not contested in good faith by Tool Company, then in such event the option exercise date shall be deferred for an identical period of time. In the event this Option shall not [fol. 4092] have been exercised on or before the option exercise date as above determined, then this Option shall thereupon terminate, and subsequent deferments of the aforesaid delivery date shall not effect a revival of the lapsed Option.

4. The purchase price of each 1649A Airplane purchased by TWA pursuant to the option herein granted shall be the sum of the following:

(1) The amounts Tool Company shall have paid Lockheed for such airplane.

(2) All additional direct costs which are paid or incurred by Tool Company and are attributable to such airplane, including, but not limited to, costs of "customer supplied equipment" provided for in Article 18 of The Purchase Agreement. To the extent that any such costs are not specifically attributable to a particular airplane they shall be allocated equally among the airplanes at the time not delivered to TWA.

(3) An amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Tool Company applicable to such airplane; *less*, however, an amount equal to the sum of all interest payments received by Tool Company from Lockheed under Letter Agreement No. 3 (SL/98053) of The Purchase Agreement. Said sum of interest payments received by Tool Company from Lockheed, shall be credited only against that part of the purchase price provided for by this subparagraph (3), and shall in no event reduce that part of the purchase price represented by sub-

paragraphs (1), (2) or (4) of this paragraph. The average [fol. 4093] amount of the outstanding advance payments applicable to each airplane shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 4 as outstanding from the respective dates such payments were made or such costs were incurred by Tool Company and until the delivery of such airplane to TWA under the conditional sale contract;

(4) The assumption by TWA of all liabilities and obligations of Tool Company to Lockheed arising out of The Purchase Agreement.

5. The purchase price of the spare engines and spare parts purchased by TWA pursuant to the Option herein granted shall be the sum of the following:

(1) the total payments made therefor by Tool Company to the vendors of such spare engines or spare parts;

(2) all additional direct costs which are paid or incurred by Tool Company and are attributable to such spare engines and spare parts or to the purchase thereof;

(3) an amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Tool Company applicable to such spare engines and spare parts. The average amount of the outstanding advance payments applicable to spare engines and spare parts shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 5 as outstanding from the respective dates such payments were [fol. 4094] made or such costs were incurred and until the delivery of the first 1649A Airplane to TWA under the conditional sale contract;

(4) any additional amount which, at the time of the delivery of the first 1649A Airplane to TWA, Tool Company is committed to pay to suppliers of spare engines and spare parts;

(5) the assumption by TWA of all other liabilities and obligations of Tool Company to the vendors of such spare engines and spare parts arising out of the purchase thereof.

6. In the event that the purchase price of the 1649A Airplanes differs from the amount computed at the time of the delivery thereof to TWA or in the event that the aggregate net amount which Tool Company is required to pay for the spare engines and spare parts in a final accounting with the suppliers thereof differs from the amount used in computing the purchase price thereof pursuant to paragraph 5, separate and independent adjustments will be made by payment from one party to the other of such difference. Similarly, Tool Company will reimburse TWA for any interest paid by TWA with respect to any portion of the purchase price of the spare engines and spare parts which is unpaid at the time of delivery of the first 1649A Airplane, to the extent and for the period that Tool Company has not earned such interest by having made payments to the suppliers.

7. The exercise of this Option by TWA shall be subject to the approval of the Civil Aeronautics Board or the re-
[fol. 4095] ceipt by Tool Company of an opinion of counsel for TWA that such approval is not necessary.

8. The foregoing Option is subject to the right of Tool Company, at any time prior to the exercise by TWA of this Option, to exercise any and all of Tool Company's rights and privileges under The Purchase Agreement; and nothing herein shall be construed as in any wise limiting, restricting, prohibiting, or otherwise affecting the exercise by Tool Company of its rights under The Purchase Agreement.

9. This Option shall be binding upon and inure to the benefit of Tool Company and TWA and their respective successors and assigns; provided, however, that TWA may not assign this Option without the prior written consent of Tool Company, and any attempted assignment without such consent shall, at the option of Tool Company, effect a termination of this Option.

10. This Option shall supersede the option granted by Tool Company to TWA dated November 10, 1955 relating to the 1649A Airplanes, which option is hereby revoked.

EXECUTED this 20th day of April, A.D. 1956.

HUGHES TOOL COMPANY
By /s/ RAYMOND M. HOLLIDAY
Vice President

[Corporate Seal]

ATTESTED:

/s/ C. H. PRICE
Assistant Secretary

[fol. 4096]

Exhibit A

CONDITIONAL SALE CONTRACT

Contract of Conditional Sale made as of the day of , 195 , between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called the "Seller"), with its principal place of business at Houston, Texas, and TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter sometimes called the "Buyer"), with its principal place of business at Kansas City, Missouri,

THE INTEREST OF THE SELLER IN THE AIRCRAFT AND EQUIPMENT COVERED HEREBY IS THAT OF A CONDITIONAL SELLER AND THE INTEREST OF THE BUYER THEREIN IS THAT OF A CONDITIONAL BUYER.

WITNESSETH:

WHEREAS, Hughes has contracted to purchase from Lockheed Aircraft Corporation (hereinafter called "Lockheed") the twenty-five (25) Model L-1649A Lockheed Constellation Airplanes identified as follows:

C.A.A. Registration No.	Mfg. Serial No.

together with the airplane engines (each of which is of 750 or more rated take-off horsepower and will be later identi-

fied by manufacturer's serial number in a supplement to this Conditional Sale Contract) installed in each thereof on the date of delivery of such airplanes to Hughes and together with the propeller assemblies and all other equip- [fol. 4097] ment and accessories attached to such airplanes and engines on the date of delivery of such airplanes to Hughes (hereinafter called "the Airplanes");

WHEREAS, Hughes has also contracted to purchase from various vendors extra airplane engines (each of which is of 750 or more rated take-off horsepower and will be later identified by manufacturer's serial number in a supplement to this Conditional Sale Contract) and propeller assemblies and airframe spare parts, spare parts for airplane engines and for propeller assemblies, and other accessories, flight equipment and parts, for use on or in connection with the operation or maintenance of the Airplanes at, in or near repair or overhaul bases, airports, airfields, landing strips, hangars, warehouses, storehouses and buildings owned, operated, leased or used by Buyer at any one or more of the locations shown on Exhibit 1 annexed hereto (all of which engines, propeller assemblies, parts, accessories and equipment are hereinafter referred to as "Spares"); and

WHEREAS, Hughes desires to sell and TWA desires to buy the Airplanes and Spares pursuant to the conditional sale arrangements set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the Airplanes and Spares upon the terms and conditions hereinafter set forth.

2. (a) Simultaneously upon conveyance of title to each Airplane from Lockheed to Seller, such Airplane shall forthwith be delivered to Buyer and Buyer shall accept such delivery at Lockheed Air Terminal, Burbank, California, or at such other place to which the Airplane has been delivered to Seller by Lockheed.

[fol. 4098]

(b) Seller shall deliver the Spares, or cause them to be delivered, to Buyer at Kansas City, Missouri, or such other place as may be designated by Buyer, such deliveries to be made upon delivery of the first Airplane to Buyer, or as soon thereafter as practicable, and with respect to Spares not then delivered to Seller, upon delivery of such Spares to Seller, or as soon thereafter as practicable.

3. (a) The purchase price of each Airplane for purposes of this Contract shall be the aggregate of

(1) The amounts Seller shall have paid Lockheed for such Airplane at the time of its delivery to Buyer hereunder;

(2) All additional direct costs which have been paid or incurred by Seller at the time of the delivery of such Airplane to Buyer and are attributable to such Airplane, including, but not limited to, costs of "customer furnished equipment". To the extent that any such costs are not specifically attributable to a particular Airplane they shall be allocated equally among the Airplanes at the time not delivered to Buyer;

(3) An amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Seller applicable to such Airplanes; *less*, however, an amount equal to the sum of all interest payments received by Seller from Lockheed for advance payments made by Seller to Lockheed in connection with the purchase agreement between them covering the Airplanes. Said sum of interest payments received by Seller from Lockheed shall be credited only against that part of the purchase price provided for by this subparagraph (3), and shall in no event reduce that part of the purchase price represented by subparagraphs (1) and (2) of this paragraph. The average amount of the outstanding [fol. 4099] advance payments applicable to each Airplane shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and

(2) of this paragraph 3(a) as outstanding from the respective dates such payments were made or such costs were incurred by Seller and until the delivery of such Airplane to Buyer under this Contract.

(b) The purchase price of Spares for purposes of this Contract shall be the aggregate of

(1) the total payments made therefor by Seller to the vendors of such Spares at the time of the delivery of the first Airplane to Buyer hereunder;

(2) all additional direct costs which have been paid or incurred by Seller at the time of the delivery of the first Airplane to Buyer and are attributable to such Spares or to the purchase thereof;

(3) an amount equal to interest at the rate of three per cent (3%) per annum on the average amount of the outstanding advance payments made by Seller applicable to such Spares. The average amount of the outstanding advance payments applicable to Spares shall be computed by considering the payments made or costs incurred as set forth in subparagraphs (1) and (2) of this paragraph 3(b) as outstanding from the respective dates such payments were made or such costs were incurred by Seller and until the delivery of the first Airplane to Buyer under this contract;

(4) any additional amount which, at the time of the delivery of the first Airplane to Buyer hereunder, Seller is committed to pay to suppliers of Spares.

(c) The purchase price of each Airplane and the purchase price of Spares shall each be paid by Buyer to Seller in sixty (60) equal consecutive monthly installments, together with interest on the unpaid balance at the rate of per cent (%) per annum. The first of such payments [fol. 4100] relating to each Airplane shall be made at the time of delivery of such Airplane, and the first of such payments relating to Spares shall be made at the time of delivery of the first Airplane. As to each Airplane, and as to

Spares, the second and succeeding payments shall be made monthly on the first day of the months succeeding the month in which the first payment is required to be paid, until the whole of each such purchase price shall have been paid. All payments shall be made to the Seller at the Hughes Tool Company, Houston, Texas.

(d) In the event that the purchase price of the Airplanes differs from the amount computed at the time of the delivery thereof to Buyer hereunder or in the event that the aggregate net amount which Seller is required to pay for the Spares in a final accounting with the suppliers thereof differs from the amount used in computing the purchase price thereof pursuant to subparagraph 3(b), separate and independent adjustments will be made by payment from one party to the other of such difference. Similarly, Seller will reimburse Buyer for any interest paid by Buyer with respect to any portion of the purchase price of the Spares which is unpaid at the time of delivery of the first Airplane hereunder, to the extent and for the period that Seller has not earned such interest by having made payments to the suppliers.

4. Title to the Airplanes and Spares shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes and Spares shall pass to Buyer.

5. Upon the happening of any one or more of the following events, namely:

[fol. 4101]

(a) default in making any payment, in the manner herein specified, of any monthly installment of the purchase price of the Airplanes or Spares and such default shall continue unremedied for five (5) days after written notice thereof shall have been delivered by Seller to Buyer; or

(b) default shall be made by the Buyer in the observance or performance by the Buyer of any other covenant or agreement contained herein, and such default shall continue

unremedied for thirty (30) days after written notice thereof shall have been delivered by Seller to Buyer; or

(c) the Buyer shall become insolvent, or shall file a voluntary petition in bankruptcy, or shall file a voluntary petition or answer seeking or consenting to reorganization pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee of or for it or a substantial part of its property; or

(d) an order shall be entered pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors approving a petition seeking a reorganization of, or if an order shall be entered appointing a receiver or trustee of, or for any substantial part of the property of, or if a warrant of attachment shall be issued against any substantial part of the property of, the Buyer, and any such order is not dismissed or stayed within sixty (60) days from its entry or such attachment is not dismissed [fol. 4102] or bonded within thirty (30) days from its levy; or

(e) the Bonds at the time issued and outstanding under that certain Indenture, dated as of December 1, 1954, between Buyer and Irving Trust Company, as Trustee, as said Indenture may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Bonds as set forth therein, upon the occurrence of any of the "events of default" described in said Indenture, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof); or

(f) the Notes at the time issued and outstanding under that certain Chattel Mortgage, dated as of December 20, 1954, between Buyer and Irving Trust Company, as Trustee, as said Chattel Mortgage may have heretofore been or may hereafter be amended, shall be declared and become

due and payable, prior to the date of maturity of such Notes as set forth therein, upon the occurrence of any of the "events of default" described in said Chattel Mortgage, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof);

then Seller may at once (or at any later time) proceed to take possession of the Airplanes and Spares in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes or Spares may be and take possession thereof and remove the same. Seller may resell the Airplanes and Spares, so retaken, at public or private sale, with or without having such Airplanes and Spares at the place of sale, and upon such terms and in such manner as Seller may [fol. 4103] determine. Notice of the intention of Seller to so sell the Airplanes and Spares shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes and Spares, including any reasonable attorneys' fees incurred. The balance of such proceeds shall be applied to the payment of all sums owing to Seller under this agreement and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the purchase price of any Airplane or Spares falling due after Seller has taken possession of such Airplane or Spares pursuant to this provision.

6. From and after delivery of the Airplanes and Spares to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes,

(a) Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as

shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes and Spares. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

(b) Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller as their interests may appear, in such amounts and with such companies as shall be satisfactory to Seller. [fol. 4104] If any such Airplane shall be lost, destroyed or damaged to such an extent that repair thereof is impractical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Upon such payment to the Seller of the insurance to the extent of the unpaid balance of the purchase price of any Airplane, absolute title to the Airplane so damaged or to any parts of an Airplane so destroyed shall vest in Buyer and Seller shall deliver to Buyer such proper documents of title with respect thereto as Buyer may reasonably require. Buyer shall be under no obligation to make any payments on account of the purchase price of such Airplane falling due after such loss, destruction or damage. Any insurance proceeds in excess of the amount payable to the Seller, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

7. Buyer may at any time pay to Seller the unpaid balance of the purchase price of the Airplanes and Spares or any part thereof, without premium or penalty.

8. Upon the payment to Seller of the balance of the purchase price of the Airplanes and Spares together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate.

(a) a bill of sale duly vesting in Buyer the title to the Airplanes and Spares free and clear of all liens, claims, charges and encumbrances attaching subsequent to the de-

livery of the Airplanes and Spares to Seller and not arising [fol. 4105] out of the possession, use or operation of the Airplanes and Spares by Buyer, and.

(b) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

9. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes and Spares or the purchase thereof by Seller, then in addition to the sales price provided for in paragraph 3, Buyer shall pay to Seller the amount thereof, upon demand.

10. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower.

11. The Buyer agrees that it will pay and discharge all taxes, assessments, governmental charges and all charges for keep, repairs, storage, maintenance or accessories, which if unpaid might become a lien, charge or encumbrance upon or against any of the Airplanes or Spares; and upon the failure of the Buyer so to do the Seller may make any such payment; provided, however, that nothing herein contained shall require the Buyer to pay such tax, assessment or charge so long as the Buyer shall in good faith contest the validity thereof and shall furnish the Seller such bond or indemnity as the Seller shall require, unless, in the judgment of the Seller, forfeiture is likely to result from any such failure to pay. Any sum or sums so paid by the Seller, together with interest thereon at the highest lawful contract rate, shall be and become a part of the sum which the Buyer [fol. 4106] is required to pay under this Contract, and shall immediately, without demand, be due and be repaid by the Buyer to the Seller.

The Buyer will, upon written request from the Seller,

(a) reimburse the Seller for all filing or recording fees incurred in connection with filing or recording or refiling

or re-recording this Contract and all supplements and additions hereto, if any;

(b) execute and deliver to the Seller all such further documents and instruments and do such further acts as may be necessary to perfect the rights of the Seller herein contemplated; and

(c) furnish to the Seller at reasonable intervals reports and certificates setting forth all the information necessary to inform the Seller as to the continued existence, location and condition of the Airplanes and Spares. The Seller shall also have the right to inspect the Airplanes and Spares at all times when the same are not in use and when such inspection can be had without undue inconvenience or expense to the Buyer.

12. Buyer agrees to maintain the Airplanes and Spares in good repair and working condition at its own expense, except any airplane lost, destroyed or so damaged that insurance with respect thereto is payable to the Seller pursuant to paragraph 6 hereof. Subject to the proper performance of such covenant, the Buyer may make repairs and replacements to the Airplanes and Spares and may substitute for engines, propellers and any other equipment installed in or attached to the Airplanes or Spares, engines, propellers or other equipment of substantially the same [fol. 4107] kind and value; provided, however, that no removal of any such engines, propellers, or equipment, and no replacement thereof, shall divest Seller of its superior title thereto, or render any such removed or replaced equipment subject to the lien or claim of any person other than Seller, UNLESS and UNTIL such equipment is replaced by equipment of substantially the same kind and value, the title to which, upon such equipment being installed in or attached to the Airplanes or Spares, may validly vest in Seller free and clear of the lien or claim of any other person, subject to the provisions of paragraph 14 hereof. In the case of any such permitted substitution, title to the substituted equipment shall immediately vest in Seller and become subject to the provisions of this Conditional Sale Contract and remain so vested and so subject unless and until substituted

for in the manner hereinabove permitted; and title to the equipment substituted for shall vest in Buyer.

13. Until title to the Airplanes and Spares shall have passed to the Buyer hereunder, the Buyer shall have no right, power or authority to sell, transfer, assign, mortgage or encumber or in any other manner whatsoever dispose of the Airplanes and Spares or any part thereof (except as provided in paragraph 12 hereof) or any interest therein, and the Buyer hereby agrees that, except as permitted by paragraph 12 hereof, the Buyer will not (voluntarily or involuntarily) sell, transfer, mortgage, encumber or in any other manner whatsoever dispose of the Airplanes and Spares or any part thereof or any interest therein. Buyer agrees, except as provided herein, that the Airplanes and Spares will be used exclusively for its commercial air transport operations and related activities and that it will [fol. 4108] not permit the Airplanes and Spares to be used or possessed by others. Buyer may permit the use of the Airplanes and Spares by other airlines with which Buyer enters into interchange agreements provided that any such use by other airlines shall for the purposes of this agreement be considered to be use by the Buyer.

14. To the extent, if any, that there is a conflict between any of the provisions of this agreement and any of the provisions of the Indenture of Mortgage dated as of December 1, 1954 between the Buyer and Irving Trust Company, as Trustee, or of the Chattel Mortgage dated as of December 20, 1954 between the Buyer and Irving Trust Company, as Trustee, the provisions of said Indenture and said Chattel Mortgage shall prevail and the provisions of this agreement shall be deemed amended to the extent necessary to avoid such conflict. Seller recognizes the liens created by (a) Granting Clause VI of said Indenture and (b) Granting Clause III of said Chattel Mortgage as prior liens on the aircraft engines and on the propellers, appliances and spare parts relating to the Airplanes or Spares when and so long as they shall be installed in, attached to or incorporated in any of the aircraft or aircraft engines at any time subject to the lien of said Indenture or of said Chattel Mortgage, as the case may be.

Seller agrees that so long as all the Bonds issued under said Indenture at the time outstanding shall be held by the original purchaser thereof, (a) Seller will not repossess the Airplanes or Spares, in the event of a default by Buyer under this agreement, without affording such original purchaser reasonable notice of such default and a reasonable opportunity to remedy the same and (b) such original [fol. 4109] purchaser shall have the right, at its option, to purchase at any time all the interest of Seller hereunder by paying to Seller the then remaining balance of the purchase price hereunder plus accrued interest.

Seller also agrees that in the event of a default by Buyer hereunder, the rights and remedies of Seller shall be limited to repossession of the Airplanes and Spares.

15. Before delivery of each Airplane to Buyer hereunder, Buyer will cause to be fastened thereon in a location reasonably adjacent to, and not less prominent than that of, the airworthiness certificate for such Airplane, a name plate no larger than four inches by seven inches (4″ x 7″) bearing the following legend:

"Hughes Tool Company holds legal title to this Airplane as Conditional Seller."

Buyer shall maintain such name plate in such location or in one of at least equal prominence and visibility at all times. Buyer may affix to the Airplanes Buyer's name, insignia or other legends customarily displayed by Buyer on its airplanes.

16. Buyer shall indemnify and hold harmless Seller, its agents and its employees from any and all liability for losses, expenses, damages, demands and claims in connection with or arising out of any death of, or injury or alleged injury or damage to, persons or property sustained, or alleged to have been sustained, in connection with or arising or alleged to have arisen out of Buyer's possession, use or operation of the Airplanes or Spares and Buyer agrees to handle any claim and defend any suit or action brought against Seller, its agents or its employees, or any of them, based on any such death, injury or damage, or alleged in-

jury or damage, and to pay all damages, costs and expenses, [fol. 4110] including attorneys' fees, in connection therewith or resulting therefrom.

Buyer's liability to Seller under this paragraph 16 is conditioned upon Seller's promptly giving notice to Buyer of institution of such suit or action or of receipt of such claim or demand. Buyer shall have the option at any time to conduct negotiations with the party or parties making any such claim or demand, and may intervene in any such suit or action. Whether or not Buyer intervenes in any such suit or action, it shall be entitled to assume, conduct or control the defense thereof, and Seller shall not settle or discharge any such claim, demand, suit, action or judgment without prior notice to and the consent of Buyer.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this agreement as of the day and year first above written.

HUGHES TOOL COMPANY

By .....
Vice President

Attest:

.....
Assistant Secretary

TRANS WORLD AIRLINES, INC.

By .....
Vice President—Finance

Attest:

.....
Assistant Secretary

[fol. 4111]

STATE OF)
: ss.:
COUNTY OF)

On this day of , 195 , before me personally appeared , to me personally known, who, being by me duly sworn, did depose and say that he is of HUGHES TOOL COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument bearing the corporate name of said corporation is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Given under my hand and official seal the day and year above written.

.....
Notary Public

(Notarial Seal)

[fol. 4112]

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this day of , 195 , before me personally appeared , to me personally known, who, being by me duly sworn, did depose and say that he is of TRANS WORLD AIRLINES, INC., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument bearing the corporate name of said corporation is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Given under my hand and official seal the day and year above written.

.....
Notary Public

(Notarial Seal)

[fol. 4113] Original

[Stamp—Received—Docket Section—May 10, 3:30 PM '56 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.
806 Connecticut Avenue, N.W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF,
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

[fol. 4114]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (hereinafter referred to as "TWA") respectfully moves that the Board enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (hereinafter referred to as "Hughes"), so that the terms of such order will not restrict the right of TWA to purchase from Hughes Tool Company up to 25 jet powered aircraft suitable for operation by TWA on both its domestic and international routes.

1. Thorough studies have been made by TWA of the characteristics of all jet aircraft available in this country and abroad. None of these aircraft has the range desirable for all-year around operations across the Atlantic so as to permit non-stop services in both directions under the extreme conditions frequently encountered on that route.

2. During the past few years important new develop- [fol. 4115] ments have occurred affecting jet aircraft which make it possible to design aircraft at this time that are superior in performance, safety and economy to the com-

mercial aircraft now being constructed, the designs for which were initially laid down four or five years ago.

3. Hughes Tool Company has indicated to TWA that, subject to approval of the Board, it is willing to construct jet transport aircraft for TWA's use, taking into account the most recent design developments, on terms that are at least as favorable in every respect as those that can be secured from any manufacturer for a similar aircraft. Deliveries of such aircraft will commence in 1961. The aircraft will be used interchangeably on TWA's international and domestic routes.

4. Hughes Tool Company has advised TWA that it is willing to sell such aircraft to any other airline at the same price as sold to TWA.

5. Hughes Tool Company has also advised TWA that the aircraft would be constructed by the Aircraft Division of Hughes Tool Company in a new factory to be located in accordance with the recently announced policy of the Air Force to insure the widest possible dispersal of aircraft production facilities.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying the Board's Order Serial No. 3210, as amended, so that the terms of such order will not restrict the right of TWA to acquire from Hughes Tool Company the aircraft as referred to above, and providing such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ WARREN LEE PIERSON
Warren Lee Pierson
Chairman of the Board

May 10, 1956

[fol. 4116]

[Stamp—Received—Docket Section—Sep 13, 2:02 PM '56—Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.
806 Connecticut Avenue, N.W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF,
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

September 11, 1956

[fol. 4117]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (hereinafter referred to as "TWA") respectfully moves that the Board enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (hereinafter referred to as "Hughes"), so that the terms of such order will not restrict the right of TWA to borrow from Hughes up to $10,000,000 under the terms and conditions hereinafter described.

1. The terms and conditions upon which TWA proposes to borrow up to $10,000,000 from Hughes and upon which Hughes will extend credit in such amount to TWA are as follows:

(a) All loans will be upon unsecured notes of TWA in substantially the form attached as Exhibit A.

(b) The initial amount of the credit will not exceed $10,000,000. On August 1, 1957, the maximum amount [fol. 4118] of the credit shall be reduced to $7,500,000; on November 1, 1957, to $5,000,000; on February 1, 1958, to $2,500,000;

(c) The credit shall terminate on April 30, 1958, or at such earlier time as the Treasurer of Hughes deems necessary because of other cash requirements or contractual limitations;

(d) Borrowings and repayments shall be in multiples of $100,000 and upon reasonable notice to Hughes;

(e) All loans shall bear interest for each day at a rate equivalent to the then prevailing prime rate for commercial loans in New York, New York, computed on the basis of 365 days;

(f) No commitment fee shall be required;

(g) Before each borrowing Hughes shall have received a signed opinion from TWA's counsel that the promissory note, when executed and delivered, will be a valid and binding obligation of TWA according to its tenor and effect and that its issuance will not violate any obligation or restriction imposed upon TWA by any law or governmental regulation or by any contract, indenture or other document to which TWA is a party.

2. The arrangement described above will operate as a standby credit to be utilized as and when required by TWA, thus providing TWA with reserve funds in the event additional cash is needed during the period of the credit.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying the Board's Order Serial No. 3210, as amended, so that the terms of such order will not restrict the right of TWA to [fol. 4119] borrow up to $10,000,000 from Hughes Tool Company on the above terms and conditions, and providing such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ J. L. WELLER
Vice President

September 11, 1956

[fol. 4120]

EXHIBIT A

New York, New York
, 195....

$

FOR VALUE RECEIVED, the undersigned TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter sometimes called "TWA"), promises to pay fifteen (15) days after demand the sum of
Dollars ($) to the order of HUGHES TOOL COMPANY at the office of Irving Trust Company, One Wall Street, New York 15, New York, together with interest from date on the unpaid principal hereof at a rate for each day equivalent to the then prevailing prime rate for commercial loans in New York, New York, computed on the basis of 365 days.

Demand for payment, protest and notice of dishonor are hereby waived by the undersigned.

The indebtedness represented by this promissory note, including both principal and interest, is subordinated and subject in right of payment to the prior payment in full of all the principal of, premium, if any, and interest on the 3¾% Equipment Mortgage Sinking Fund Bonds due December 1, 1969 of TWA now or hereafter issued under the Indenture of Mortgage dated as of December 1, 1954, between TWA and Irving Trust Company, as Trustee, as said Indenture has heretofore been or from time to time hereafter may be amended, modified or supplemented, and any renewal, extension, refunding, amendment and modification of any such Bonds (all of such principal of, premium, if any, and interest on all of such Bonds together with any such renewal, extension, refunding, amendment and modification of any thereof being hereinafter called [fol. 4121] "Bond Indebtedness"). Upon any distribution of all or substantially all of the assets of TWA or upon any dissolution, winding up or liquidation of TWA, whether voluntary or involuntary, or upon any reorganization, readjustment, arrangement or similar proceeding relating to TWA or any of its creditors as such property, whether in bankruptcy, insolvency, receivership proceedings or otherwise, or upon any assignment by TWA for the benefit of

creditors or upon any other marshalling of the assets or liabilities of TWA,

(a) all the Bond Indebtedness shall first be paid in full in cash or provision made for such payment by deposit of the requisite cash in trust with a bank or banks (either theretofore acting as Trustee under the aforementioned Indenture, or duly appointed paying agents for the purpose) before any payment or distribution is made on account of the principal or interest on the indebtedness under this promissory note;

(b) any payment or distribution (whether in cash, property or securities) to which the holder of this promissory note would be entitled except for the provisions of this subordination clause shall be paid or delivered by the trustee, receiver, assignee for the benefit of creditors, or other liquidating agents making such payment or distribution, directly and ratably to the holders of the Bond Indebtedness (or to their representatives or to the Trustee under the aforementioned Indenture) to the extent necessary to pay off the Bond Indebtedness in full after giving effect to any concurrent payment or distribution or provision therefor as aforesaid to the holders of the Bond Indebtedness; and

(c) in the event that notwithstanding the foregoing, any payment or distribution (whether in cash, property or securities) shall be received by the holder of this promissory note before all such Bond Indebtedness is paid in full, or provision is made as aforesaid for its payment, such payment or distribution shall be ratably held in trust for the benefit of, and shall be ratably paid over or delivered to the holders of, the Bond Indebtedness or their representatives (or to the Trustee under the aforementioned Indenture), for application to or payment of all the Bond Indebtedness remaining unpaid to the extent necessary to pay the Bond Indebtedness in full after giving effect to any concurrent payment or distribution or provision therefor as aforesaid to the holders of such Bond Indebtedness.

In the event and during the continuation of any default under any instrument constituting Bond Indebtedness or

pursuant to which any Bond Indebtedness shall have been issued, continuing during the period of grace, if any, spec-
[fol. 4122] ified in such instrument, no payment of principal or interest shall be made on this promissory note and no holder of this promissory note shall be entitled to receive any such payment. Nothing contained in this promissory note shall affect the obligation of TWA to make, or prevent TWA from making, at any time, except during the pendency of any of the proceedings or upon the happening of any of the events referred to in the foregoing provisions of this promissory note or during the continuation of any such default, payments of principal of, or interest on, this promissory note.

The above subordination clause defines solely the relative rights as between the holder of this promissory note and the holders of the Bond Indebtedness; and nothing in such clause shall be deemed to impair the obligations under this promissory note as between the holder of this promissory note and TWA.

TRANS WORLD AIRLINES, INC.

By .....

[fol. 4123]

[Stamp—Received—Docket Section—Apr 2, 2:13 PM '57—Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.
806 Connecticut Avenue, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF,
Attorneys for Trans World Airlines, Inc.
25 Broadway,
New York 4, N. Y.

March 29, 1957

[fol. 4124]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (hereinafter called TWA) respectfully moves that the Board enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (hereinafter called Hughes), so that said order will permit TWA to sell to Hughes, and Hughes to buy from TWA, Hughes' pro rata share of an issue of subordinated convertible securities of TWA, to be offered to TWA's stockholders as hereinafter described, and any of such securities offered to TWA's stockholders and not subscribed for upon such offering, and permit TWA and Hughes to enter into and perform an agreement relating to such offering as hereinafter described.

1. TWA is considering the refinancing of its obligations under existing and contemplated conditional sale contracts with Hughes with respect to the 8 Lockheed 1049G and [fol. 4125] 25 Lockheed 1649A aircraft, and related spare parts and engines, referred to in paragraph 8 of Order

Serial No. 3210, as amended by Order Serial No. E-10300, issued May 17, 1956. Such refinancing would be accomplished in part by loans from institutional investors and in part by the sale of subordinated notes or debentures of TWA, convertible into common stock, and the proceeds would be used to pay TWA's obligations to Hughes with respect to the above mentioned aircraft, spare parts and engines. The purpose of such refinancing would be to lengthen the period over which TWA's obligations with respect to such aircraft, spare parts and engines would have to be repaid, and to provide the possibility that a part of such obligations would be converted into common stock. Terms of the refinancing, as presently contemplated, are set forth under the caption "Proposed Increase of Authorized Stock and Contemplated Offering to Stockholders" in the TWA proxy statement, dated March 29, 1957, attached hereto as Exhibit A.

2. The proposed refinancing would include an offering of the subordinated convertible securities to TWA's stockholders by means of transferable subscription warrants. The principal amount of such convertible securities to be offered has not been determined, but is presently expected to be somewhat more than $37,000,000. TWA would make such an offering only if Hughes enters into an agreement relating to such offering, as more fully described in the TWA proxy statement (Exhibit A hereto), providing among other things that Hughes would acquire enough of the convertible securities offered so that, with the proceeds of other subscriptions for such securities, TWA would obtain at least $34,000,000. Hughes would also have the right under [fol. 4126] such agreement to acquire all the convertible securities offered to stockholders that were not subscribed for upon such offering.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying the Board's Order Serial No. 3210, as amended, so that said order will permit TWA to sell to Hughes, and Hughes to buy from TWA, Hughes' pro rata share of an issue of sub-

ordinated convertible securities of TWA, to be offered to TWA's stockholders as above described, and any of such securities offered to TWA's stockholders and not subscribed for upon such offering, and permit TWA and Hughes to enter into and perform an agreement relating to such offering as above described, and providing for such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ J. L. WELLER
Vice President

March 29, 1957

[fol. 4127] Original

[Stamp—Received—Docket Section—May 28 11 46 AM '57 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

AMENDED MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.,
806 Connecticut Avenue, N. W.,
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF,
Attorneys for Trans World Airlines, Inc.
25 Broadway,
New York 4, N. Y.

[fol. 4128]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

AMENDED MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (hereinafter called TWA) filed with the Board on or about April 1, 1957 its motion requesting the issuance of an order which would permit TWA to sell convertible debentures to Hughes Tool Company (hereinafter called Hughes) as a part of a general offering to all stockholders of TWA, and to enter into a commitment with Hughes insuring the purchase of at least $34,000,000 of such debentures pursuant to a refinancing program described in said motion.

Since the filing of the motion, the Board of Directors of TWA has determined that the refinancing program could not be carried out satisfactorily by the issuance of convertible debentures and that it would be advisable to make an offering to its stockholders of additional shares of common stock, in lieu of debentures, at the rate of one new share for each share now held.

[fol. 4129] The proposal to offer common stock instead of debentures was announced at the annual meeting of stockholders held in Kansas City on April 25, 1957, at which the stockholders voted to increase the number of authorized shares of common stock from 4,000,000 to 10,000,000.

TWA accordingly files this amended motion for an order by the Board modifying its Order Serial No. 3210, issued October 17, 1944, as amended (which approved the acquisition of control of TWA by Hughes) so as to permit TWA to sell to Hughes, and Hughes to buy from TWA (1) Hughes' pro rata share of an issue of common stock of TWA to be offered to TWA's stockholders as hereinafter described, and (2) any of such stock offered to TWA stockholders and not subscribed for upon such offering and so as to permit TWA and Hughes to enter into and perform a commitment agreement relating to such offering as hereinafter described.

1. As explained in its original motion, TWA wishes to refinance its obligations under existing and contemplated conditional sale contracts with Hughes covering the 8 Lockheed 1049G and 25 Lockheed 1649A aircraft, spare parts and engines, referred to in paragraph 8 of Order Serial No. 3210, as amended by Order Serial No. E-10300, issued May 17, 1956.

Present plans contemplate that such refinancing would be accomplished in part by loans from the banks and/or insurance companies and in part by the sale of additional shares of common stock of TWA. The proceeds of the loans and stock sales will be applied toward the payment of TWA's obligations to Hughes with respect to the above-mentioned aircraft, spare parts and engines.

As a result of the sale of common stock instead of debentures, the refinancing would effect the reduction of, [fol. 4130] TWA's debt by at least $34,000,000, with a corresponding reduction in interest payments.

2. The offering of additional shares of common stock to TWA's stockholders would be made by means of transferable subscription warrants permitting the purchase of one new share for each share now held. At the present time there are 3,337,036 shares outstanding, so that this would result in an offering of 3,337,036 additional shares. The price at which such shares are to be offered depends on the market at the time the offering is made, which is expected to be in June, and will be determined at that time.

TWA and Hughes propose to enter into an agreement providing, among other things, that Hughes would have the right to acquire any shares offered to stockholders not subscribed for upon the offering, and that if Hughes took less than all such unsubscribed shares, they would be obligated to take enough shares to provide TWA with net proceeds of $34,000,000 from the shares acquired by Hughes from TWA. A copy of the proposed form of commitment agreement is attached as Annex A.

Discussions have been initiated with insurance companies for long-term debt financing of the 1049G and 1649A aircraft, but it does not appear possible that such loans can be consummated before September or October of this year. In the meantime, TWA has completed arrangements by which it will borrow $35,000,000 from banks secured by chattel mortgages on the 1049G and 1649A aircraft and engines. This bank loan will provide for repayment as follows: $10,000,000 on December 1, 1957 with interest at 5% and the [fol. 4131] balance payable in 36 equal monthly instalments beginning January 1, 1958 with interest at 5¼%.

The commitment agreement attached as Annex A provides that if TWA does not secure an additional $15,000,000 from common stock and debt on or before December 1, 1957, Hughes will establish a revolving credit in favor of TWA for the amount by which the additional proceeds from stock and loans fall short of $15,000,000. This revolving credit, which terminates December 1, 1960, provides for interest at the prime commercial rate.

3. The proposed refinancing on the terms hereinabove described is of substantial advantage to TWA for the following reasons, among others:

(a) The transaction will enable TWA to reduce its indebtedness by at least $34,000,000, and possibly more than this amount, depending on the market price of the shares at the time of the offering, the subscription price and the interest of the other stockholders in the offering.

This will improve the financial strength of TWA, decreasing the ratio of debt to equity. It would also reduce the amount of debt on which interest would be payable.

(b) As a consequence of the financing, as above described, the requirements for cash to meet interest payments and debt reduction on the new 1049G and 1649A aircraft will be reduced by approximately 40 per cent, leaving TWA in a much more flexible position for future financing of jet equipment and facilities.

4. On or about May 28, 1957 TWA will file with the [fol. 4132] Securities and Exchange Commission a Registration Statement under the Securities Act of 1933, covering the proposed offering of additional shares of common stock to TWA stockholders. In accordance with normal SEC practice the Registration Statement will become effective at 5:30 P.M. on the 19th day after the date of filing. On the day following the date it becomes effective, TWA will mail to stockholders subscription warrants permitting the purchase of new shares, accompanied by a copy of the prospectus which is a part of the SEC Registration Statement. In order to make the offering to stockholders attractive, it is essential that the prospectus state that Hughes has agreed to purchase at least $34,000,000 of the stock as above referred to.

For this reason, action by the Civil Aeronautics Board on the transaction between TWA and Hughes, as above described, is urgently needed on or before June 11, 1957, to meet the requirement of the New York Stock Exchange that conditions precedent to the offering be removed at least four trading days before the Registration Statement becomes effective.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying the Board's Order Serial No. 3210 as amended, so that its order will permit TWA to sell to Hughes, and Hughes to buy from TWA, (1) Hughes' pro rata share of an issue of common stock to be offered to TWA's stockholders as above described and (2) any of such stock offered to TWA's stockholders and not subscribed for upon such offering; and will also permit TWA and Hughes to enter into and perform an agreement relating to such offering substantially

[fol. 4133] in the form attached hereto as Annex A, and providing for such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ A. V. LESLIE
Senior Vice President—Finance

[fol. 4134]

ANNEX A

May , 1957

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Dear Sirs:

Referring to the registration statement, which you have filed under the Securities Act of 1933, covering an offering of Common Stock to stockholders at the rate of one share for each share of Common Stock held, we confirm the following agreement between us which shall become effective when said registration statement shall have become effective and the Civil Aeronautics Board shall have entered an order approving in substance the transactions contemplated hereby:

1. You shall make the offering of the Common Stock described in said registration statement.

2. If you make such offering, we shall acquire from you, and you shall issue and sell to us, all or any part of the shares of Common Stock so offered to stockholders and not subscribed for upon such offering, the number of shares of Common Stock to be so acquired by us to be determined by us; provided, however, that if we purchase less than all said unsubscribed shares, we shall be obligated to purchase such number thereof as will, with the shares acquired by us on the exercise of subscription warrants, provide you

with aggregate net proceeds of at least $34,000,000 from the shares acquired by us.

3. All acquisitions of Common Stock by us pursuant to paragraph 2 above shall be at the price at which the Common Stock is offered to your stockholders, pursuant to the above mentioned registration stafement, and we shall notify you, not later than three business days after the expiration of the subscription period, of the number of shares to be acquired by us in the event we desire to acquire more than the shares which we are obligated to purchase pursuant to paragraph 2. Payment to you for shares acquired by us pursuant to paragraph 2 shall be at such times and in such amounts as you may request.

4. Nothing in this agreement shall impair our rights as one of your stockholders to receive subscription warrants for Cominon Stock in connection with such offering to stockholders, to purchase subscription warrants on the [fol. 4135] open market, and to purchase Common Stock upon the exercise of subscription warrants received from you or purchased from others. We will not sell any subscription warrants acquired by us.

5. You shall apply the net proceeds from the sale of Common Stock and from any loans hereafter made by you from banks or other institutional investors, to the payment or prepayment of amounts owed by you to us in connection with the purchase of the eight Lockheed Constellation 1049G aircraft and the twenty-five Lockheed 1649A aircraft and related spare parts and engines.

6. In the event that, as a result of our purchase of Common Stock, we become the owner of 80% or more of your outstanding Common Stock, you will permit us to file consolidated income tax returns for you and ourselves, upon the condition that we agree to indemnify you, in a manner satisfactory to you and your counsel, against all loss or liability arising out of your having paid greater taxes on income in the aggregate than you would have been required to pay if your income tax returns had not been consolidated with ours and to secure our indemnity by bond or otherwise, in a manner satisfactory to you.

7. If on or before December 1, 1957 you have not received an aggregate of $15,000,000 or more in net proceeds from the sale of (a) Common Stock in excess of $34,000,000 and (b) bonds, notes or other indebtedness in addition to the contemplated bank loans of $35,000,000 referred to in your registration statement above mentioned, then, in such event, we will enter into a revolving credit agreement in the form attached hereto as APPENDIX I for the amount by which such net proceeds aggregate less than $15,000,000. You shall apply the proceeds of any loans from us under such revolving credit, up to a maximum of $10,000,000, to the payment of the $10,000,000 of such contemplated bank loans maturing December 1, 1957.

If the foregoing correctly states the agreement between us, kindly so confirm by signing in the place indicated and returning the copy of this letter enclosed for the purpose, whereupon this letter and said copy will constitute the agreement between us, to become effective as above [fol. 4136] provided.

Very truly yours,

HUGHES TOOL COMPANY

By .....

Confirmed, May , 1957

TRANS WORLD AIRLINES, INC.

By .....

[fol. 4137]

APPENDIX I

REVOLVING CREDIT AGREEMENT

THIS AGREEMENT, dated as of December 1, 1957, between TRANS WORLD AIRLINES, INC., a Delaware corporation (herein called TWA) and HUGHES TOOL COMPANY, a Delaware corporation (herein called Hughes).

WITNESSETH:

WHEREAS, Hughes is willing to establish a revolving credit on the terms hereinafter set forth,

Now, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto agree as follows:

1. Hughes hereby establishes a revolving credit in favor of TWA in the amount of $, for the period from December 1, 1957 to December 1, 1960, when the credit shall expire and terminate.

2. Whenever TWA desires to obtain a loan hereunder, TWA shall give Hughes written notice at least five business days prior to the expected borrowing, and to deliver to Hughes on or before the borrowing date, a note, in substantially the form of EXHIBIT A attached hereto, bearing the date on which such loan is to be made, payable to Hughes in the amount of the borrowing and executed by a duly authorized officer of TWA.

3. TWA may at any time prepay any loan or portion thereof with accrued interest to the date of prepayment, provided that any partial prepayment of principal shall be in the amount of $100,000 or any multiple thereof.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto as of the day and year first above [fol. 4138] written.

TRANS WORLD AIRLINES, INC.

By .....
Vice President

[Corporate Seal]

Attest:

.....
Secretary

HUGHES TOOL COMPANY

By .....
Vice President

[Corporate Seal]

Attest:

.....
Secretary

[fol. 4139]

EXHIBIT A

New York, New York
, 195....

$

FOR VALUE RECEIVED, the undersigned TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter sometimes called "TWA"), promises to pay on December 1, 1960 the sum of Dollars ($) to the order of HUGHES TOOL COMPANY at the office of Irving Trust Company, One Wall Street, New York 15, New York, together with interest from date on the unpaid principal hereof at a rate for each day equivalent to the then prevailing prime rate for commercial loans in New York, New York, computed on the basis of 365 days.

Demand for payment, protest and notice of dishonor are hereby waived by the undersigned.

The indebtedness represented by this promissory note, including both principal and interest, is subordinated and subject in right of payment to the prior payment in full of (a) all the principal of, premium, if any, and interest on the 3¾% Equipment Mortgage Sinking Fund Bonds due December 1, 1969 of TWA (hereinafter sometimes called the "Bonds") now or hereafter issued under the Indenture of Mortgage dated as of December 1, 1954, between TWA and Irving Trust Company, as Trustee, as said Indenture has heretofore been or from time to time hereafter may be amended, modified or supplemented, (b) all the principal of, premium, if any, and interest on indebtedness of TWA not in excess of $50,000,000 (hereinafter sometimes called the "Indebtedness") now or hereafter issued under an Indenture of Mortgage, dated as of , 1957, between TWA and , as Trustee, providing a lien upon 8 Lockheed Constellation 1049G aircraft, up to 25 Lockheed 1649A aircraft, and related engines, as said Indenture may hereafter be amended, modified or supplemented, and (c) any renewal, extension, refunding, amendment and modification of any Bonds or Indebtedness (all of such principal of, premium, if any, and interest on all Bonds and Indebtedness together with any such renewal, extension, refunding, amendment and modification of any

thereof being hereinafter called "Senior Indebtedness"); provided, however, that neither this note nor any note of TWA of similar tenor shall be deemed to be a refunding of any Senior Indebtedness. Upon any distribution of all or substantially all of the assets of TWA or upon any dissolution, winding up or liquidation of TWA, whether voluntary or involuntary, or upon any reorganization, re- [fol. 4140] adjustment, arrangement or similar proceeding relating to TWA or any of its creditors as such or property, whether in bankruptcy, insolvency, receivership proceedings or otherwise, or upon any assignment by TWA for the benefit of creditors or upon any other marshalling of the assets or liabilities of TWA;

(a) all the Senior Indebtedness shall first be paid in full in cash or provision made for such payment by deposit of the requisite cash in trust with a bank or banks (either theretofore acting as the respective Trustees under the respective Indentures above mentioned, or duly appointed paying agents for the purpose) before any payment or distribution is made on account of the principal or interest on the indebtedness under this promissory note;

(b) any payment or distribution (whether in cash, property or securities) to which the holder of this promissory note would be entitled except for the provisions of this subordination clause shall be paid or delivered by the trustee, receiver, assignee for the benefit of creditors, or other liquidating agents making such payment or distribution, directly and ratably to the holders of the Senior Indebtedness (or to their representatives or to the respective Trustees under the respective Indentures above mentioned,) to the extent necessary to pay off the Senior Indebtedness in full after giving effect to any concurrent payment or distribution or provision therefor as aforesaid to the holders of the Senior Indebtedness; and

(c) in the event that notwithstanding the foregoing, any payment or distribution (whether in cash, property or securities) shall be received by the holder of this promissory note before all such Senior Indebtedness is paid in full, or provision is made as aforesaid for its payment, such pay-

ment or distribution shall be ratably held in trust for the benefit of, and shall be ratably paid over or delivered to the holders of, the Senior Indebtedness or their representatives (or to the respective Trustees under the respective Indentures above mentioned,) for application to or payment of all the Senior Indebtedness remaining unpaid to the extent necessary to pay the Senior Indebtedness in full after giving effect to any concurrent payment or distribution or provision therefore as aforesaid to the holders of such Senior Indebtedness.

In the event and during the continuation of any default under any instrument constituting Senior Indebtedness or pursuant to which any Senior Indebtedness shall have been issued, continuing during the period of grace, if any, spec- [fol. 4141] ified in such instrument, no payment of principal or interest shall be made on this promissory note and no holder of this promissory note shall be entitled to receive any such payment. Nothing contained in this promissory note shall affect the obligation of TWA to make, or prevent TWA from making, at any time, except during the pendency of any of the proceedings or upon the happening of any of the events referred to in the foregoing provisions of this promissory note or during the continuation of any such default, payments of principal of, or interest on, this promissory note.

The above subordination clause defines solely the relative rights as between the holder of this promissory note and the holders of the Senior Indebtedness; and nothing in such clause shall be deemed to impair the obligations under this promissory note as between the holder of this promissory note and TWA.

TRANS WORLD AIRLINES, INC.

By .....

[Stamp—Received—Docket Section, Apr 18, 3:35 PM '58, Civil Aeronautics Board]

[fol. 4142] Original

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON
Chairman of the Board of Directors
Trans World Airlines, Inc.
806 Connecticut Avenue, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

[fol. 4143]

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition and control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

These transactions arise out of commitments made by Hughes to third parties in order to assist TWA in connection with the procurement of aircraft, the purchase of spare parts and the raising of funds.

1. In order to provide TWA with the aircraft needed by it to operate transatlantic economy schedules and to meet the demand for charter and cargo services as well as for high density flights on domestic routes, Hughes has [fol. 4144] made arrangements by which TWA can lease and purchase a total of nine Lockheed 1049H aircraft on terms favorable to TWA.

Hughes has leased from third parties for the purpose of making them available to TWA, the following five aircraft:

(a) By an agreement dated July 26, 1957 Hughes leased two Lockheed 1049H Constellation aircraft and related spare parts from Resort Airlines, Inc. (herein referred to as "Resort"), for a term ending April 30, 1958, a transaction approved by the Board on August 15, 1957 in Order E-11698. TWA has used these airplanes and spares but has paid no rent for them.

(These aircraft and spares leased from Resort have recently been sold to California-Eastern Aviation, Inc. and are the subject of the contract described in subparagraph (b) below).

(b) By an agreement between Hughes and California-Eastern Aviation, Inc. (herein referred to as "Cal-Eastern"), dated April 2, 1958, filed with the Civil Aeronautics Board in Docket No. 9407, Hughes has agreed to lease from Cal-Eastern two Lockheed 1049H Constellation aircraft and related spare parts beginning May 1, 1958, if approval of the Civil Aeronautics Board has been obtained by that date. The lease is for thirty-six months subject to termination by Cal-Eastern at any time on or after February 1, 1959 on 90 days' notice.

(c) By an agreement between Hughes and Cal-Eastern [fol. 4145] dated December 18, 1957, Hughes has also leased from Cal-Eastern three additional Lockheed 1049H Constellation aircraft and related spare parts for thirty-six months. This lease was approved by the Civil Aeronautics Board on January 15, 1958, Order No. E-12111.

The three aircraft and parts were delivered by Cal-Eastern directly to TWA following the commencement of the term of the lease and have been in TWA's sole possession and control since then, but it has paid no rent for them.

2. Hughes proposes to sublet the five aircraft and parts referred to in paragraph 1 hereof to TWA at the same rental price as provided in Hughes' agreements with Resort and Cal-Eastern, subject to the following conditions:

(a) TWA agrees to sublease these five aircraft during at least a portion of each calendar year 1958, 1959 and 1960. TWA also agrees to lease the aircraft during 1961

until the expiration of the leases from Cal-Eastern to Hughes. TWA may terminate the sublease in respect of the year 1958, 1959 or 1960 by giving written notice to Hughes, in which event the termination shall become effective after the expiration of a period following such notice during which the net rental obligations of TWA with respect to such aircraft shall aggregate $1,000,000 in such calendar year (the maximum rental obligations allowable under TWA's existing indentures).

(b) If TWA exercises its right to terminate the sublease in any calendar year, Hughes shall have the right to terminate the sublease as to all future calendar years by giving TWA written notice to that effect 90 days prior to the beginning of the next calendar year. A copy of [fol. 4146] the form of sublease is attached as Exhibit A.

3. TWA has contracted to purchase from Lockheed four 1049H aircraft which were originally ordered by Hughes from Lockheed. Hughes cancelled its agreement with Lockheed simultaneously with the execution of the purchase agreement between TWA and Lockheed. In connection therewith, TWA and Hughes agreed, subject to the approval of the Civil Aeronautics Board, that if by June 1, 1958 the sublease of the five 1049H aircraft has not been consummated, Hughes would at TWA's request acquire the four 1049H aircraft or TWA would at Hughes' request sell such aircraft to Hughes. On any such transfer of the aircraft, TWA would receive from Hughes an amount equal to TWA's book value at that time and Hughes would assume any remaining liabilities of TWA to Lockheed in respect thereof.

A copy of the above agreement is attached as Exhibit B.

4. In December 1957 Hughes bought $1,155,143 of the spare parts originally ordered by Linee Aeree Italiane in connection with the four Lockheed 1649A aircraft LAI had contracted to purchase from the manufacturer. TWA agreed to buy the remainder of the spare parts, and on December 31, 1957 entered into a contract for the purchase of the four aircraft from Lockheed. TWA now proposes to purchase the $1,155,143 of spare parts for these aircraft from Hughes at Hughes' cost.

5. Hughes has guaranteed obligations of TWA to third parties in the following instances:

[fol. 4147] (a) Pursuant to loan agreement dated December 27, 1957 TWA has borrowed $12,000,000 from Irving Trust Company and Bank of America repayable in 90 days with a 90-day extension period. Hughes guaranteed the loan without any consideration from TWA.

(b) As mentioned in paragraph 4, TWA has contracted to buy from Lockheed the four 1649A aircraft originally ordered by Linee Aeree Italiane. These aircraft are to be sold under conditional sales agreements which provide that when payments required thereunder cannot be made because of the cash requirements of TWA's indentures, such payments shall be deferred to the end of the contract. Hughes has agreed with Lockheed that if TWA is required to defer any payment, Hughes will itself make the payment at the time it becomes due, and will be reimbursed by Lockheed only when the final deferred payments are collected by Lockheed from TWA. Thus, in a sense, Hughes may receive payments from TWA if TWA finds it necessary to defer any of the instalments under its conditional sales agreements with Lockheed.

(In the event of a default by TWA under the conditional sales contract, Hughes has agreed with Lockheed to buy the airplanes from Lockheed at an amount equal to the unpaid purchase price, but neither Lockheed nor Hughes has any recourse against TWA).

(c) As set forth in paragraph 3 TWA has also contracted to buy from Lockheed four 1049H aircraft. The contractual arrangements are in substance the same as those outlined in (b) above.

[fol. 4148] 6. TWA respectfully requests the Board to modify its Order Serial No. 3210 so as to allow TWA

(a) to pay Hughes for the rent incurred by Hughes (plus payments or minus credits made or received by Hughes on account of differences in airframe or engine overhaul hours) to Resort and Cal-Eastern for the Lockheed 1049H aircraft referred to in paragraph

1, in accordance with the terms of the sublease set forth in Exhibit A; and to enter into a sublease of the five Lockheed 1049H aircraft and related parts in substantially the form set forth in Exhibit A;

(b) to sell to Hughes the four Lockheed 1049H aircraft under the conditions outlined in paragraph 3; and

(c) to buy at Hughes' cost, new spare parts for Lockheed 1649A aircraft in an aggregate amount not to exceed $1,155,143, referred to in paragraph 4.

The commitments made by Hughes to third parties on TWA's behalf, referred to in paragraph 5, would make Hughes a creditor of TWA if TWA defaults on its bank loans or would make Hughes the indirect recipient of equipment purchase payments made by TWA if TWA is required to defer instalments on its conditional sales contracts with Lockheed. In either of these events TWA would pay Hughes directly or indirectly the amount due on obligations contracted by TWA with a third party. While TWA believes that payments of this nature are not restricted by the CAB order approving Hughes' control of TWA, TWA nevertheless respectfully prays that the [fol. 4149] Board either (i) clarify the order by excluding from its terms any payments by TWA to Hughes of obligations incurred by TWA to third parties which have been assumed by Hughes as guarantor, or (ii) approve, to the extent such approval is required, payment by TWA to Hughes of the $12,000,000 TWA borrowed from banks under its loan agreement of December 27, 1957, in the event Hughes should be required to pay such loans as guarantor and payment by TWA of instalments on its conditional sales contracts with Lockheed which would indirectly go to Hughes, in the event Hughes has been required to take up instalments deferred by TWA.

7. The aircraft and spare parts involved in the transactions described above are all needed in the performance of TWA's certificated services, and the terms and conditions on which TWA is receiving them from Hughes involve the payment of no consideration to Hughes other

than the rent incurred by Hughes in the case of the leased airplanes and reimbursement of Hughes' actual cost of the 1649A spares. The guarantees by Hughes of the TWA bank loan and of TWA's instalment obligations under conditional sales contracts, were of substantial advantage to TWA, were purely for TWA's convenience and entailed no cost whatever to TWA.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into the transactions with Hughes Tool Company described above to the extent such modification may be deemed necessary.

Respectfully submitted

/s/ WARREN LEE PIERSON
Warren Lee Pierson
Chairman of the Board

April 18, 1958

[fol. 4150] Exhibit A

AIRPLANE SUBLEASE AGREEMENT

1. Hughes Tool Company (hereinafter called "Hughes") hereby agrees to sublet and grant to Trans World Airlines, Inc. (hereinafter called "TWA") and TWA agrees to hire and take, during the term of this agreement, those certain five (5) Lockheed L-1049H Constellation airplanes bearing CAA numbers N 101R, N 102R, N 6931C, N 6932C and N 6933C (Manufacturer's Serial Nos. 4818, 4824, 4813, 4823 and 4826, respectively) and related spare parts, leased to Hughes by California Eastern Aviation, Inc. (hereinafter called "Cal-Eastern") except that the two airplanes bearing CAA numbers N 101R and N 102R were leased to Hughes by Resort Airlines, Inc. (hereinafter called "Resort") for a term ending April 30, 1958 and thereafter by Cal-Eastern.

2. Hughes shall remain obligated to Resort and Cal-Eastern for rental payments and other obligations under the leases from Resort and Cal-Eastern to Hughes. TWA

will be responsible to Hughes for performance of the obligations of Hughes under the leases of the airplanes and spare parts from Resort and Cal-Eastern to Hughes except for the rental payments, and except for the payments measured by the differences in hours since last overhaul on the engines and frames.

3. TWA shall pay Hughes for the rent incurred by Hughes to Resort and Cal-Eastern for the airplanes and spare parts referred to in paragraph 1 hereof, except for [fol. 4151] any period during which the airplanes and spare parts were not available to TWA. The amounts so to be paid by TWA shall be payable monthly in advance on the first day of each month, except that rental for periods prior to the date of approval of the Civil Aeronautics Board, as provided in paragraph 5 below, shall be due and payable on the first of the month next succeeding such approval. The rent for any fraction of a month for which TWA is obligated to make payments herein shall be prorated according to the number of calendar days in such month.

4. TWA shall also reimburse Hughes for payments made by Hughes on account of differences in airframe and engine overhaul hours for the periods of TWA's use of airplanes. In the event that the differences in airframe or engine overhaul hours results in a credit to Hughes for the periods of TWA's use of the airplanes, then Hughes shall pay to TWA an amount equal to that credit.

5. This agreement is subject to approval by the Civil Aeronautics Board. The sublease of airplanes shall become effective upon entry of an order of the Board permitting TWA to perform this agreement and it shall remain in effect as to the respective airplanes for the period of the present leases from Cal-Eastern to Hughes or until terminated as to all or a part of the remaining term of said leases in accordance with the following provisions:

[fol. 4152] (a) Upon termination of Hughes' lease of any of the airplanes, TWA's sublease shall terminate as to those airplanes and continue as to the remainder. Hughes

shall notify TWA of receipt of any notice of termination under Hughes' lease of the airplanes.

(b) TWA may terminate the sublease in respect of the calendar year 1958 by giving written notice to Hughes, in which event the termination shall become effective as to the remainder of the calendar year 1958 only, but not as to calendar years 1959, 1960 or 1961, upon the expiration of a period following the giving of such notice during which the net rental obligations of TWA with respect to such aircraft shall aggregate $1,000,000 in 1958. TWA shall have the same right of termination in respect of each of the years 1959 and 1960.

(c) If TWA exercises its right to terminate the sublease as to any calendar year pursuant to subparagraph (b), Hughes shall have the right to terminate the sublease in respect of all future calendar years by giving TWA written notice to that effect 90 days prior to the beginning of the next calendar year.

HUGHES TOOL COMPANY

By .....
Vice President

AGREED:

TRANS WORLD AIRLINES, INC.

By .....
Vice President

[fol. 4153]

Exhibit B

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N.Y.

Dear Sirs:

This is to evidence our understanding concerning the four Lockheed 1049H aircraft which Hughes Tool Company had contracted to purchase from Lockheed Aircraft Corporation and which we have today released so the aircraft would be available for acquisition directly by TWA.

These four aircraft, together with five aircraft of the same type leased by Hughes Tool Company from California Eastern Aviation, Inc., and proposed to be sublet by TWA, represent all the aircraft of this type being acquired by TWA. The sublease of the five aircraft is subject to the approval of the Civil Aeronautics Board and in the event such sublease is not approved, the use by TWA of only four airplanes of the 1049H type may not be desirable. Accordingly, it is agreed that in the event such sublease of the five aircraft is not consummated on or before June 1, 1958, then (1) Hughes Tool Company, at TWA's request, will acquire the four 1049H aircraft purchased by TWA from Lockheed or (2) TWA, at Hughes Tool Company's request, will sell such aircraft to Hughes Tool Company. Any such request must be made in writing and delivered to the other party on or before June 10, 1958. On transfer of the aircraft, TWA would receive from Hughes Tool Company an amount equal to TWA's book value at that time, and Hughes will assume any remaining liabilities of TWA to Lockheed in respect thereof.

This agreement is subject to the approval of the Civil Aeronautics Board.

[fol. 4154] Your signature at the place indicated below shall constitute an acceptance of the terms above set forth.

Yours truly,

HUGHES TOOL COMPANY

By .....

ACCEPTED:

TRANS WORLD AIRLINES, INC.

By .....

[fol. 4155]

[Stamp—Received—Docket Section—Jan. 30, 9:21 A.M., '59—Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON
Chairman of the Board of Directors
Trans World Airlines, Inc.
1000—16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

January 29, 1959

[fol. 4156]

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition and control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. Hughes has on order from Boeing Airplane Company, 15 Boeing Model 707-131 jet aircraft at a purchase price of approximately $4,700,000 per aircraft. Although TWA has entered into no specific commitment to acquire such aircraft, it nevertheless contemplates that certain of these aircraft will be made available to it, on terms not yet determined, for use in TWA's certificated operations. The first of these aircraft (herein referred to as the "Leased Aircraft") has been delivered to Hughes by Boeing Airplane Company and TWA desires to make use of such aircraft in its jet training program.

[fol. 4157] 2. Promptly after the filing of this application Hughes proposes to deliver the Leased Aircraft to

TWA under a lease agreement, providing for its lease by TWA on a day-to-day basis, subject to the right of either party to terminate the lease on 24 hours written notice and subject to the approval of the Civil Aeronautics Board. A copy of the proposed form of lease is attached as Exhibit A.

3. Hughes has also acquired a stock of spare parts and provisioning for such Boeing Model 707-131 jet aircraft and proposes to make these available to TWA to the extent needed by TWA in the operation of the Leased Aircraft. Hughes will sell to TWA such of these spare parts and provisioning as TWA will request for use on the Leased Aircraft during the term of the lease, at Hughes' cost but not in excess of a total of $100,000. A copy of the proposed form of letter agreement relative to this transaction is attached as Exhibit B.

4. TWA believes that use by it of the Leased Aircraft, and the spare parts therefor as set forth in paragraph 3 hereof, is necessary to enable TWA to carry forward its jet training program so that it will be in a position to conduct certificated service with jet equipment when such equipment is delivered to it.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into the transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ THOMAS K. TAYLOR

Thomas K. Taylor
Vice President

January 29, 1959

[fol. 4158] EXHIBIT A

THIS AGREEMENT entered into as of the 27th day of January 1959 by and between Hughes Tool Company, a Delaware corporation ("Lessor") and Trans World Airlines, Inc., a Delaware corporation ("Lessee"):

WITNESSETH:

1.

Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to hire and take from Lessor, subject to the terms and conditions herein provided, one Boeing Model 707-131 aircraft bearing FAA No. N731-TW (Manufacturer's Serial No. 17658); including four Pratt and Whitney JT3C-6 Engines (Serial Nos. SNP 629419B, SNP 629201B, SNP 629202B, and SNP 629200B), herein sometimes referred to as "the Aircraft."

2.

The lease of the Aircraft shall commence on delivery of the Aircraft to Lessee and shall continue from day-to-day until terminated by either of the parties. The lease shall terminate upon twenty-four *hours* written notice to such effect from one party to the other. The Aircraft shall be delivered to Lessee hereunder at Kansas City, Missouri, on January 29, 1959 or on the delivery of the Aircraft to Lessor by Boeing Airplane Company, whichever is later.

3.

(a) At the time of commencement of this lease the Aircraft shall have a current provisional Certificate of Airworthiness issued under Special Civil Air Regulation No. 425, adopted by the Civil Aeronautics Board on June 20, 1958, permitting crew training, service testing and simulated carrier operations but not permitting carriage of passengers for hire. Lessee agrees to accept the Aircraft [fol. 4159] in its present condition and Lessor makes no warranties or representations whatsoever as to condition of the Aircraft, and none shall be implied in law.

Italicized word handwritten interlineation.

Such warranties and guarantees from manufacturers and suppliers of the Aircraft and its equipment as can be effectively assigned for the term of this lease are hereby assigned by Lessor to Lessee for the term of this lease to the extent of Lessee's interest accruing during the term of such lease.

(b) Upon the termination of this lease, Lessee agrees to return the Aircraft to Lessor (at Mid-Continent International Airport, Kansas City, Missouri, or such other place as may be mutually agreed) in the same condition and equipped with the same equipment as it was at the commencement of the lease, except for reasonable wear and tear from ordinary use.

4.

During the term of the lease Lessee may at its own expense remove from the Aircraft such items of equipment, and may install on the Aircraft such additional items of equipment, as Lessee may consider reasonably necessary to fit such Aircraft for use by Lessee; provided, however, that no such removal or installation which shall cause permanent change in the structure of the Aircraft shall be made without the prior written consent of Lessor unless such removal or installation is made pursuant to a mandatory FAA requirement. Such items as shall be so removed may be either retained in the custody of Lessee, or returned to Lessor, but in either event they shall be reinstalled on the Aircraft prior to the return of the Aircraft to Lessor. Items of non-mandatory nature that shall have been installed in the Aircraft shall be removed prior to the return of the Aircraft to Lessor.

[fol. 4160] 5.

Lessee shall perform all necessary maintenance, overhaul and servicing on the Aircraft during the term of the lease in accordance with the requirements of the Federal Aviation Agency.

6.

If, during the term of the lease of Aircraft pursuant to this agreement, the Federal Aviation Agency or any other governmental agency having jurisdiction shall make mandatory the installation, removal or modification (other than mere inspection) of items on the Aircraft, then compliance shall be effected promptly at Lessor's expense.

7.

Lessee shall be liable for any loss of, or damage to, any Aircraft while leased from Lessor hereunder. During all times that the Aircraft is leased hereunder, Lessee shall, at its own cost and expense, keep the Aircraft, insured against loss or damage from crash, fire, wind storm, collision, strike, riots, insurrection, civil commotion or other accident or casualty (except war risk) with Lessor named as a co-insured and shall furnish Lessor with a certificate of insurance therefor. The amount of such insurance shall not be less than $4,700,000 per Aircraft, with flight deductible and ground deductible clauses substantially equivalent to those currently in force in Lessee's other insurance policies. In the event of damage to the Aircraft, during the term of the lease, from a risk required to be covered by such insurance, Lessee will repair the damage at its own expense. Upon complying with the foregoing provision, Lessee shall be entitled to retain (or, in the case of receipt by Lessor, to receive from Lessor) all proceeds of insurance with respect to such damage. In the event the Aircraft is [fol. 4161] lost, destroyed or damaged beyond repair, Lessee will pay to Lessor, as their interests may appear, for such Aircraft the sum of $4,700,000 (U. S. currency), less any amounts that might have been paid to and retained by Lessor as proceeds from the insurance, which shall constitute payment for all right, title and interest of Lessor in the Aircraft which shall thereupon pass to Lessee. The policies providing the insurance required by this agreement shall include customary provisions that Lessor shall not be responsible for the representations and warranties of Lessee and that Lessor shall receive notice prior to cancellation or expiration (unless the policy is being renewed) of any policy.

8.

Lessee agrees to defend, indemnify and hold harmless Lessor from and against all losses, including cost and expenses by reason of claims for injury or death of persons and loss or damage to property arising out of or in any manner connected with possession, use or operation by Lessee of the Aircraft leased hereunder during the term of such lease. During such term the Lessee shall keep in force and effect liability insurance in the amounts recommended by Lessee's Senior Vice-President-Finance.

9.

Lessee agrees that no Aircraft leased pursuant hereto will be used during the term of the lease in any manner which shall violate any law or regulation of any government or governmental agency having jurisdiction and that any fine, penalty or forfeiture resulting from any such violation shall be the sole responsibility of Lessee.

[fol. 4162]

10.

(a) As rent for the Aircraft leased hereunder Lessee shall pay to Lessor the sum of $2500.00 for each full day during the term of the lease. The rental shall be paid on the last day of each month.

(b) Lessee shall also pay to Lessor in respect of each of the engines on the Aircraft $31.00 per hour for each hour since the last overhaul on such engine at the time returned to Lessor on the termination of the lease less the number of hours since manufacture or overhaul on such engine on the delivery of the Aircraft to Lessee.

If the hours since last overhaul on any engine at the time it is returned to Lessor on termination of the lease are less than the number of hours since manufacture or overhaul on such engine on delivery of the Aircraft to Lessee, Lessor shall pay to Lessee $31.00 for each hour of difference between the two figures.

Settlement under this subparagraph (b) shall be made within 15 days after the end of the term of the lease.

11.

Lessee shall have no right to consent to any lien or liens on the Aircraft. Any liens incurred by Lessee shall be discharged at the cost and expense of Lessee, who shall indemnify and save Lessor harmless against any such lien or liens. Lessee shall pay all operating taxes and licenses applicable to the Aircraft or the operation thereof, and also shall pay all property taxes assessed against Lessee or Lessor with respect to the Aircraft by any state, county, or other political subdivision to which Lessor would not ordinarily pay property taxes, except for the use of the [fol. 4163] Aircraft by Lessee hereunder. Lessee also shall pay any and all state, federal, county and local sales and use taxes assessed against either Lessee or Lessor resulting from the lease or use hereunder of the Aircraft.

12.

Notwithstanding any of the above provisions it is further agreed that

(a) This lease agreement is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no rental shall be paid hereunder;

(b) This lease is subject to the necessary consents of the holders of obligations issued by Trans World Airlines, Inc. under its outstanding indentures, chattel mortgages and loan agreements. In the absence of such consents no rental shall be paid hereunder.

In Witness Whereof, each of the parties hereto has caused this agreement to be executed in its name and in its behalf by its officer or agent thereunto duly authorized.

Trans World Airlines, Inc.

By .....

Hughes Tool Company

By .....

Raymond Cook as Agent.

[fol. 4164] EXHIBIT B

HUGHES TOOL COMPANY
2200 GULF BUILDING
HOUSTON 2, TEXAS

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

Attention: Mr. A. V. Leslie

Re: Purchase of Spare Parts

Dear Sirs:

This letter will set forth our agreement and understanding concerning the purchase by TWA from Hughes Tool Company of spare parts and provisioning (herein called "Spares") for use in connection with the operation by TWA of the Boeing Model 707-131 Aircraft being leased to TWA from Hughes Tool Company under a lease agreement entered into simultaneously herewith.

From the stock of Spares owned by Hughes Tool Company and stored at Kansas City, Kansas and at other places known to TWA, TWA is hereby authorized to withdraw a supply of Spares and to store such Spares in TWA's custody at such places as it may select. From time to time TWA may purchase any of such spares as TWA may consider to be required in the operation of the aforementioned leased Aircraft, payment to be in cash and at Hughes Tool Company's actual cost. Upon the termination of the aforementioned lease agreement any Spares which are then in the custody of TWA and have not been purchased by it will promptly be returned to Hughes Tool Company at the place or places where originally withdrawn. In no event [fol. 4165] shall the aggregate dollar amount of Spares purchased by TWA under this agreement exceed the sum of $100,000.

Appropriate accounting procedures should be established for the accurate and prompt recordation of all transactions involving the withdrawing and purchase of Spares.

This agreement and arrangement are subject to approval of the Civil Aeronautics Board, and until an order has been entered by the Civil Aeronautics Board permitting the transactions covered by this agreement no payments shall be made hereunder.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

Accepted this .....
day of ....., 1959

.....
Trans World Airlines, Inc.

by

.....
Vice President

[fol. 4168]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[Stamp—Received—Docket Section—Mar. 16, 9:04 AM, '59 —Civil Aeronautics Board]

[Handwritten notation—Original]

EXHIBIT B-5 TO AFFIDAVIT OF CHESTER C. DAVIS

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON
Chairman of the Board of Directors
Trans World Airlines, Inc.
1000—16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

March 13, 1959

[fol. 4169]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition and control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. Hughes has on order from Boeing Airplane Company, 14 Boeing Model 707-131 jet aircraft at a purchase price of approximately $4,700,000 per aircraft. Although, save as hereinafter set forth, TWA has entered into no specific commitment to acquire such aircraft, it nevertheless contemplates that certain of these aircraft will be made avail- [fol. 4170] able to it, on terms not yet determined, for use in TWA's certificated operations. The first Boeing 707-131 jet aircraft has already been delivered to Hughes by Boeing Airplane Company. Hughes has delivered said aircraft to TWA under a day-to-day lease subject to the approval of the Civil Aeronautics Board, all as more fully set forth in TWA's motion dated January 29, 1959 requesting that the Board enter an order herein modifying its Order Serial

No. 3210, as amended, so that its order will permit TWA to enter into such transaction. By its Order Serial No. 13542 adopted February 26, 1959 the Board has permitted this transaction between TWA and Hughes.

2. In order to make additional such aircraft available to TWA, Hughes proposes to deliver up to eleven additional Boeing Model 707-131 jet aircraft (herein referred to as the "Leased Aircraft") to TWA under a lease agreement or agreements, providing for the lease of each such aircraft by TWA on a day-to-day basis at a rate not to exceed $2,500 per day, subject to the right of either party to terminate the lease on 24 hours written notice and subject to the approval of the Civil Aeronautics Board. Such leases would in any event terminate no later than June 30, 1959. The proposed lease or leases will be in form substantially similar to the form attached as Exhibit A to TWA's motion herein dated January 29, 1959.

3. Hughes has also acquired a stock of spare parts and provisioning for such Boeing Model 707-131 jet aircraft and proposes to make these available to TWA to the extent needed by TWA in the operation of the Leased Aircraft. Hughes will sell to TWA such of these spare parts and [fol. 4171] provisioning as TWA will request for use on the Leased Aircraft during the term of the lease or leases thereof, at Hughes' cost, provided that the total amount of spare parts and provisioning so acquired by TWA for the Leased Aircraft and for the airplane leased pursuant to Board Order No. 13542 shall not be in excess of $3,500,000. A copy of the proposed form of letter agreement relative to this transaction is attached as Exhibit A.

4. Hughes will also deliver to TWA up to 30 spare aircraft engines for the Leased Aircraft under a lease agreement or agreements to be negotiated on terms comparable to those applicable to the Leased Aircraft. A copy of such lease agreement, when negotiated, will be filed with the Board as a supplement to this motion.

5. Use by TWA of the Leased Aircraft, and the spare engines, spare parts and provisioning therefor referred to

in paragraphs 3 and 4 hereof, is necessary to enable TWA to carry forward its jet training program and to permit TWA to commence the operation of jet service on its certificated routes.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into the transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ A. V. LESLIE

A. V. Leslie
Senior Vice President-Finance
and Treasurer

March 13, 1959

[fol. 4172] EXHIBIT A

HUGHES TOOL COMPANY

2200 GULF BUILDING

HOUSTON 2, TEXAS

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

Attention: Mr. A. V. Leslie

Re: *Purchase of Spare Parts*

Dear Sirs:

This letter will set forth our agreement and understanding concerning the purchase by TWA from Hughes Tool Company of spare parts and provisioning (herein called "Spares") for use in connection with the operation by TWA of up to eleven additional Boeing Model 707-131 Aircraft which may be leased to TWA by Hughes Tool Company.

From the stock of Spares owned by Hughes Tool Company and stored at Kansas City, Kansas and at other places known to TWA, TWA is hereby authorized to withdraw a supply of Spares and to store such Spares in TWA's custody at such places as it may select. From time to time TWA may purchase any of such spares as TWA may consider to be required in the operation of the aforementioned leased Aircraft, payment to be in cash and at Hughes Tool Company's actual cost. Upon the termination of the aforementioned lease agreement any Spares which are then in the custody of TWA and have not been purchased by it will promptly be returned to Hughes Tool Company at the place or places where originally withdrawn. In no event [fol. 4173] shall the aggregate dollar amount of Spares purchased by TWA under this agreement and under the agreement of January 30, 1959 covering the purchase of Spares for use in connection with the operation of aircraft FAA No. 731-TW (Manufacturer's Serial No. 17658) exceed the sum of $3,500,000.

Appropriate accounting procedures should be established for the accurate and prompt recordation of all transactions involving the withdrawing and purchase of Spares.

This agreement and arrangement are subject to approval of the Civil Aeronautics Board, and until an order has been entered by the Civil Aeronautics Board permitting the transactions covered by this agreement no payments shall be made hereunder.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

Accepted this
day of , 1959

Trans World Airlines, Inc.

by

[fol. 4174]

BEFORE THE

CIVIL AERONAUTICS BOARD

[Stamp—Received—Docket Section—Jun 29 3.27 PM '59 —Civil Aeronautics Board]

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON
Chairman of the Board of Directors
Trans World Airlines, Inc.
1000—16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

June 26, 1959

[fol. 4175]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the matter of the application of
HUGHES TOOL COMPANY
for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. By motion filed with the Board on January 30, 1959 TWA requested a modification of Order No. 3210 issued October 17, 1944, as amended, so as to permit TWA to lease one Boeing 707-131 jet aircraft from Hughes as well as to acquire from Hughes a supply of spare parts, not to exceed $100,000 in value, which were needed for the operation of said aircraft.

On February 26, 1959 the Board by its Order No. 13542 amended Order No. 3210 so as to permit the transactions between TWA and Hughes, as set forth in said motion, to take place.

[fol. 4176] 2. Thereafter, as set forth in TWA's motion filed with the Board on March 16, 1959, subject to the approval of the Board Hughes proposed to lease to TWA up to eleven additional Boeing Model 707-131 jet

aircraft (herein referred to as the "Leased Aircraft") on a day-to-day basis at a rate of $2,500 per day, subject to the right of either party to terminate the lease agreement on twenty-four hour written notice, such leases in any event to terminate no later than June 30, 1959. As a part of this transaction Hughes also agreed to sell to TWA at Hughes' actual cost certain spare parts and provisioning, not to exceed $3,500,000 in value, needed for the operation of the Leased Aircraft.

On May 15, 1959 the Board by its Order No. 13873 amended Order No. 3210, issued October 17, 1944, as amended by subsequent orders, so as to permit the aforesaid aircraft lease transactions between TWA and Hughes and the agreement for the acquisition of up to $3,500,000 worth of spare parts to take place.

3. TWA and Hughes had anticipated that definitive financing arrangements permitting TWA to operate the Leased Aircraft on a permanent basis would be finalized on or about June 30, 1959. However, arrangements for such financing have not as yet been completed and accordingly the parties desire to extend the date of latest termination provided for in the leases of the Leased Aircraft (including the proposed lease of the aircraft not yet delivered to TWA referred to in paragraph 4) from June 30, 1959 to September 30, 1959. A proposed form of amendment so extending said leases already executed is attached hereto as Exhibit A.

[fol. 4177] 4. Aircraft FAA No. N731TW, covered by Board Order No. 13542, was leased to TWA under date of January 29, 1959. Ten of the eleven Leased Aircraft covered by the Board's Order No. 13873 have been delivered to TWA and the one remaining Leased Aircraft is scheduled for delivery in the near future.

Hughes has remaining on order from Boeing Airplane Company three additional Boeing Model 707-131 jet aircraft at a purchase price of approximately $4,700,000 per aircraft. In order to make additional such aircraft available to TWA, Hughes proposes to deliver up to three Boeing Model 707-131 jet aircraft in addition to the "Leased Aircraft" and aircraft FAA No. N731TW. The three additional Boeing Model 707-131 jet aircraft would be delivered to TWA under a lease agreement or agreements, providing for the lease of each such aircraft by TWA on a day-to-day

basis at a rate not to exceed $2500 per day, subject to the right of either party to terminate the lease on twenty-four hours written notice and subject to the approval of the Civil Aeronautics Board. Such leases would in any event terminate no later than September 30, 1959. The proposed lease or leases will be in form substantially similar to the form attached as Exhibit A to TWA's motion herein dated January 29, 1959.

5. Hughes has further agreed to sell to TWA at Hughes' cost when and if requested by TWA such spare parts and provisioning as are owned by Hughes or are on order and are available for use in the operation of the Leased Aircraft [fol. 4178] and the four other Boeing Model 707-131 jet aircraft referred to in paragraph 4. A copy of the proposed form of letter agreement relative to this transaction is attached as Exhibit B.

6. In its motion dated March 13, 1959 in the above matter, TWA requested that the Board's Order permit TWA to lease from Hughes Tool Company "up to 30 spare aircraft engines for the Leased Aircraft under a lease agreement or agreements to be negotiated on terms comparable to those applicable to the Leased Aircraft." The motion further stated "A copy of such lease agreement, when negotiated, will be filed with the Board as a supplement to this motion."

In its Order No. E-13873 the Board deferred action on TWA's motion insofar as it requests authorization for the lease of 30 spare jet engines by Hughes Tool Company to TWA.

Since the filing of the motion, TWA has tentatively decided to defer the question of how TWA should handle the acquisition of its total spare aircraft engine requirements until definitive financing has been worked out for jet equipment and as a result TWA has purchased directly from the manufacturer certain additional spare engines in order to satisfy interim requirements. Consequently, no further action is requested of the Board at this time on TWA's motion of March 13, 1959.

7. Use by TWA of the Leased Aircraft, the four additional Boeing Model 707-131 jet aircraft and the spare parts [fol. 4179] and provisioning is necessary to enable TWA to continue the operation of jet service on its certificated routes.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into the transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ A. V. LESLIE
Senior Vice President-
Finance and Treasurer

June 26, 1959

[fol. 4180] EXHIBIT A

THIS AGREEMENT entered into as of the day of , 1959 by and between Hughes Tool Company, a Delaware corporation ("Lessor") and Trans World Airlines, Inc., a Delaware corporation ("Lessee"):

WITNESSETH:

WHEREAS, Lessor and Lessee have heretofore entered into lease agreements covering the day-to-day leasing by Lessor to Lessee of Boeing Model 707-131 aircraft as follows:

Aircraft FAA No.	Date of Lease
N732TW	March 17, 1959
N733TW	March 30, 1959
N734TW	April 3, 1959
N735TW	April 18, 1959
N736TW	April 29, 1959
N737TW	May 10, 1959
N738TW	May 13, 1959
N740TW	May 24, 1959
N739TW	May 28, 1959
N741TW	June 13, 1959

and

WHEREAS, said leases contemplate that they shall in any event terminate no later than June 30, 1959, and

WHEREAS, the parties desire to amend said leases so as to extend the date of latest termination from June 30, 1959 to September 30, 1959.

NOW, THEREFORE, the parties hereto agree as follows:

1. Effective June 30, 1959, the second sentence of paragraph 2 of each of the leases above specified is hereby [fol. 4181] amended to read as follows:

> "The lease shall terminate upon twenty-four hour written notice to such effect from one party to the other and shall in any event terminate no later than September 30, 1959."

2. (a) This lease amendment is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no rental shall be paid hereunder;

(b) This lease amendment is subject to the necessary consents of the holders of obligations issued by Trans World Airlines, Inc. under its outstanding indentures, chattel mortgages and loan agreements. In the absence of such consents no rental shall be paid hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in its name and in its behalf by its officer or agent thereunto duly authorized.

TRANS WORLD AIRLINES, INC.

By .....
Senior Vice President-Finance

HUGHES TOOL COMPANY

By .....
Vice President

[fol. 4182] EXHIBIT B

HUGHES TOOL COMPANY
2200 GULF BUILDING
HOUSTON 2, TEXAS

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

Attention: Mr. A. V. Leslie

Re: *Purchase of Spare Parts*

Dear Sirs:

The letter agreement between us dated March 25, 1959 provides that TWA may purchase at Hughes Tool Company's actual cost such Boeing 707-131 aircraft spare parts and provisioning owned by Hughes Tool Company as TWA may request, not to exceed however in aggregate dollar amount the sum of $3,500,000.

To permit the continued operation of the Boeing 707 aircraft by TWA Hughes Tool Company hereby agrees, when and if requested by TWA, to sell to TWA on the same terms and conditions as outlined in our letter of March 25, 1959, such additional 707-131 spare parts and provisioning as are owned by Hughes or are on order and are available for use in connection with the operation of said aircraft.

This amendment to our agreement is subject to the approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the additional transactions covered by this amendment no payments shall be made under said amendment.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

Accepted this
day of , 1959

Trans World Airlines, Inc.
by

[fol. 4183] [Handwritten notation—Original]

[Stamp—Received—Docket Section—Sep. 23, 4:38 PM, '59 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

WARREN LEE PIERSON
Chairman of the Board of Directors
Trans World Airlines, Inc.
1000 - 16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

September 22, 1959

[fol. 4184]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. By motion filed with the Board on January 30, 1959, TWA requested a modification of Order No. 3210 issued October 17, 1944, as amended, so as to permit TWA to lease one Boeing 707-131 jet aircraft from Hughes.

On February 26, 1959 the Board by its Order No. 13542 amended Order No. 3210 so as to permit the aforesaid transaction between TWA and Hughes to take place.

2. Thereafter on May 15, 1959 the Board by its Order No. 13873 approved the leasing by Hughes to TWA of up [fol. 4185] to 11 additional Boeing Model 707-131 jet aircraft as set forth in TWA's motion filed with the Board on March 16, 1959. Said leases were on a day-to-day basis and were to expire no later than June 30, 1959. Ten such leases were executed.

3. By motion filed June 29, 1959 TWA requested modification of Order No. 3210 so as to permit the extension of the ten leases referred to in paragraph 2 under the same rental and other terms until no later than September 30, 1959, as well as to permit the lease, under identical terms, of four additional Boeing Model 707-131 aircraft.

On July 1, 1959, the Board by its Order No. 14169 amended Order No. 3210, issued October 17, 1944, as amended by subsequent orders, so as to permit the aforesaid aircraft lease transactions between TWA and Hughes to take place. The ten Boeing Model 707-131 jet aircraft leased by Hughes to TWA as set forth in paragraph 2, together with the four additional Boeing Model 707-131 jet aircraft leased to TWA as authorized by Order No. 14169, are herein referred to as the "Leased Aircraft".

4. TWA and Hughes had anticipated that definitive financing arrangements permitting TWA to operate the Leased Aircraft on a permanent basis would have heretofore been finalized. However, since arrangements for such financing have not as yet been completed the parties accordingly desire to extend the date of termination provided for in the leases of the Leased Aircraft beyond September 30, 1959 and until terminated by either party upon twenty-four hours written notice by one party to the other. A proposed form of amendment so extending said leases is attached [fol. 4186] hereto as Exhibit A.

5. Use by TWA of the Leased Aircraft is necessary to enable TWA to continue the operation of jet service on its certificated routes.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into the transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ A. V. LESLIE
Senior Vice President—
Finance and Treasurer

September 22, 1959

[fol. 4187] EXHIBIT A

THIS AGREEMENT entered into as of the day of , 1959 by and between Hughes Tool Company, a Delaware corporation ("Lessor") and Trans World Airlines, Inc., a Delaware corporation ("Lessee"):

WITNESSETH:

WHEREAS, Lessor and Lessee have heretofore entered into lease agreements covering the day-to-day leasing by Lessor to Lessee of Boeing Model 707-131 aircraft as follows:

Aircraft FAA No.	Date of Lease
N732TW	March 17, 1959
N733TW	March 30, 1959
N734TW	April 3, 1959
N735TW	April 18, 1959
N736TW	April 29, 1959
N737TW	May 10, 1959
N738TW	May 13, 1959
N740TW	May 24, 1959
N739TW	May 28, 1959
N741TW	June 13, 1959
N742TW	July 1, 1959
N743TW	July 10, 1959
N744TW	July 14, 1959
N745TW	August 1, 1959

and

WHEREAS, said leases, as amended, contemplate that they shall in any event terminate no later than September 30, 1959, and

WHEREAS, the parties desire to amend said leases so as to extend the date of termination beyond September 30, 1959 and until terminated by either party upon twenty-four hours written notice by one party to the other.

NOW, THEREFORE, the parties hereto agree as follows:

[fol. 4188] 1. Effective September 30, 1959, the second sentence of paragraph 2 of each of the leases above specified is hereby amended to read as follows:

"The lease shall terminate upon twenty-four hour written notice to such effect from one party to the other".

2. (a) This lease amendment is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no rental shall be paid hereunder;

(b) This lease amendment is subject to the necessary consents of the holders of obligations issued by Trans World Airlines, Inc, under its outstanding indentures, chattel mortgages and loan agreements. In the absence of such consents no rental shall be paid hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in its name and in its behalf by its officer or agent thereunto duly authorized.

TRANS WORLD AIRLINES, INC.

By .....
Senior Vice President—Finance

HUGHES TOOL COMPANY

By .....
Vice President

[fol. 4189] [Handwritten notation—Original]

[Stamp—Received—Docket Section—Nov. 6, 2:40 PM, '59—Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000 - 16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

November 6, 1959

[fol. 4190]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. Hughes has on order from Boeing Airplane Company 12 Boeing Model 707-331 jet aircraft at a purchase price of approximately $5,600,000 per aircraft. In addition Hughes has on order 30 Convair Model 880 jet aircraft at a purchase price of approximately $3,930,000 per aircraft.

2. Although TWA has entered into no specific commitment to acquire such aircraft, it nevertheless contemplates that certain of these aircraft will be made available to it, on terms not yet determined, for use in TWA's certificated [fol. 4191] operations. Current estimates indicate that the first Boeing Model 707-331 aircraft will be ready for delivery in November, 1959 and that the first Convair 880 aircraft will be ready for delivery approximately one month

thereafter. TWA desires to make use of the first aircraft to be delivered in its jet training program and subsequently to make use of these and other such aircraft in the operation of jet service on its certificated routes.

3. As TWA has advised the Board in connection with the temporary extension of its leases from Hughes Tool Company of Boeing Model 707-131 aircraft, approved by CAB Order No. 14504, definitive financing plans for TWA's jet aircraft program have not yet been completed. Pending the completion of these definitive plans, it is desirable that interim arrangements be made covering TWA's use of the jet aircraft in its operation.

4. In order to make certain of such aircraft available to TWA, Hughes proposes to deliver Boeing Model 707-331 jet aircraft and Convair Model 880 jet aircraft (said Boeing and Convair jet aircraft being hereinafter referred to as the "Leased Aircraft") to TWA under a lease agreement or agreements, providing for the lease of each such aircraft by TWA on a day-to-day basis at a rate not to exceed $2,940 per day with respect to the Boeing Model 707-331 jet aircraft and $2,070 per day with respect to the Convair Model 880 jet aircraft, subject to the right of either party to terminate the lease on twenty-four hours written notice and subject to the approval of the Civil Aeronautics Board. Such lease will be in substantially the same form as the [fol. 4192] present leases by TWA from Hughes of Boeing Model 707-131 aircraft, the subject of CAB Orders Nos. 13542, 13873 and 14169. A copy of the proposed form of lease is attached as Exhibit A. No more than eight of each type of aircraft would be leased by TWA without the submission to the Board of a supplemental motion requesting approval of such additional leases.

5. Hughes has also acquired or has on order certain spare parts and provisioning for the Boeing Model 707-331 aircraft and for the Convair Model 880 aircraft. Hughes will sell to TWA at Hughes' cost when and if requested by TWA such spare parts and provisioning as are owned by Hughes or are on order. A copy of the proposed form of letter agreement relative to this transaction is attached as Exhibit B.

6. TWA believes that use by it of the Leased Aircraft, and the spare parts and provisioning therefor, as set forth in paragraph 5, is necessary to enable TWA to carry forward its jet training program and to enable TWA to conduct certificated service with Boeing Model 707-331 and Convair Model 880 jet aircraft when such aircraft are delivered to it.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ CHARLES S. THOMAS
C. S. THOMAS
President

November 6, 1959

[fol. 4193] EXHIBIT A

THIS AGREEMENT entered into as of the day of , 1959 by and between Hughes Tool Company, a Delaware corporation ("Lessor") and Trans World Airlines, Inc., a Delaware corporation ("Lessee"):

WITNESSETH:

I.

Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to hire and take from Lessor, subject to the terms and conditions herein provided, one Model aircraft bearing FAA No. (Manufacturer's Serial No.), including four Engines (Serial Nos. , , , and), herein sometimes referred to as "the Aircraft."

2.

The lease of the Aircraft shall commence on delivery of the Aircraft to Lessee and shall continue from day-to-day until terminated by either of the parties. The lease shall

terminate upon twenty-four hour written notice to such effect from one party to the other. The Aircraft shall be delivered to Lessee hereunder at
or such other place as may be mutually agreed.

3.

(a) Lessee agrees to accept the Aircraft in its present condition and Lessor makes no warranties or representations whatsoever as to condition of the Aircraft, and none shall be implied in law.
[fol. 4194] Such warranties and guarantees from manufacturers and suppliers of the Aircraft and its equipment as can be effectively assigned for the term of this lease are hereby assigned by Lessor to Lessee for the term of this lease to the extent of Lessee's interest accruing during the term of such lease.

(b) Upon the termination of this lease, Lessee agrees to return the Aircraft to Lessor (at Mid-Continent International Airport, Kansas City, Missouri, or such other place as may be mutually agreed) in the same condition and equipped with the same equipment as it was at the commencement of the lease, except for reasonable wear and tear from ordinary use.

4.

During the term of the lease Lessee may at its own expense remove from the Aircraft such items of equipment, and may install on the Aircraft such additional items of equipment, as Lessee may consider reasonably necessary to fit such Aircraft for use by Lessee; provided, however, that no such removal or installation which shall cause permanent change in the structure of the Aircraft shall be made without the prior written consent of Lessor unless such removal or installation is made pursuant to a mandatory FAA requirement. Such items as shall be so removed may be either retained in the custody of Lessee, or returned to Lessor, but in either event they shall be reinstalled on the Aircraft prior to the return of the Aircraft to Lessor. Items of non-mandatory nature that shall have been in-

stalled in the Aircraft shall be removed prior to the return of the Aircraft to Lessor.

[fol. 4195]

5.

Lessee shall perform all necessary maintenance, overhaul and servicing on the Aircraft during the term of the lease in accordance with the requirements of the Federal Aviation Agency.

6.

If, during the term of the lease of Aircraft pursuant to this agreement, the Federal Aviation Agency or any other governmental agency having jurisdiction shall make mandatory the installation, removal or modification (other than mere inspection) of items on the Aircraft, then compliance shall be effected promptly at Lessor's expense.

7.

Lessee shall be liable for any loss of, or damage to, any Aircraft while leased from Lessor hereunder. During all times that the Aircraft is leased hereunder, Lessee shall, at its own cost and expense, keep the Aircraft, insured against loss or damage from crash, fire, wind storm, collision, strike, riots, insurrection, civil commotion or other accident or casualty (except war risk and engine ingestion) with Lessor named as a co-insured and shall furnish Lessor with a certificate of insurance therefor. The amount of such insurance shall not be less than $ per Aircraft, with flight deductible and ground deductible clauses substantially equivalent to those currently in force in Lessee's other insurance policies. In the event of damage to the Aircraft, during the term of the lease, from a risk required to be covered by such insurance, Lessee will repair the dam-
[fol. 4196] age at its own expense. Upon complying with the foregoing provision, Lessee shall be entitled to retain (or, in the case of receipt by Lessor, to receive from Lessor) all proceeds of insurance with respect to such damage. In the event the Aircraft is lost, destroyed or damaged beyond repair, Lessee will pay to Lessor, as their interests

may appear, for such Aircraft the sum of $ (U. S. currency), less any amounts that might have been paid to and retained by Lessor as proceeds from the insurance, which shall constitute payment for all right, title and interest of Lessor in the Aircraft which shall thereupon pass to Lessee. The policies providing the insurance required by this agreement shall include customary provisions that Lessor shall not be responsible for the representations and warranties of Lessee and that Lessor shall receive notice prior to cancellation or expiration (unless the policy is being renewed) of any policy.

8.

Lessee agrees to defend, indemnify and hold harmless Lessor from and against all losses, including cost and expenses by reason of claims for injury or death of persons and loss or damage to property arising out of, or in any manner connected with possession, use or operation by Lessee of the Aircraft leased hereunder during the term of such lease. During such term the Lessee shall keep in force and effect liability insurance in the amounts recommended by Lessee's Senior Vice-President—Finance.

[fol. 4197]

9.

Lessee agrees that no Aircraft leased pursuant hereto will be used during the term of the lease in any manner which shall violate any law or regulation of any government or governmental agency having jurisdiction and that any fine, penalty or forfeiture resulting from any such violation shall be the sole responsibility of Lessee.

10.

(a) As rent for the Aircraft leased hereunder Lessee shall pay to Lessor the sum of $ for each full day during the term of the lease. The rental shall be paid on the last day of each month.

(b) Lessee shall also pay to Lessor in respect of each of the engines on the Aircraft $ per hour for each hour since the last overhaul on such engine at the time returned

to Lessor on the termination of the lease less the number of hours since manufacture or overhaul on such engine on the delivery of the Aircraft to Lessee.

If the hours since last overhaul on any engine at the time it is returned to Lessor on termination of the lease are less than the number of hours since manufacture or overhaul on such engine on delivery of the Aircraft to Lessee, Lessor shall pay to Lessee $ for each hour of difference between the two figures.

Settlement under this subparagraph (b) shall be made within 15 days after the end of the term of the lease.

11.

Lessee shall have no right to consent to any lien or liens [fol. 4198] on the Aircraft. Any liens incurred by Lessee shall be discharged at the cost and expense of Lessee, who shall indemnify and save Lessor harmless against any such lien or liens. Lessee may sublease the Aircraft to any scheduled airline operating in the United States, provided such sublease is made expressly subject to the terms and conditions hereof. Lessee shall pay all operating taxes and licenses applicable to the Aircraft or the operation thereof, and also shall pay all property taxes assessed against Lessee or Lessor with respect to the Aircraft by any state, county, or other political subdivision to which Lessor would not ordinarily pay property taxes, except for the use of the Aircraft by Lessee hereunder. Lessee also shall pay any and all state, federal, county and local sales and use taxes assessed against either Lessee or Lessor resulting from the lease or use hereunder of the Aircraft.

The title of Lessor (whether as trustee or otherwise), to the Aircraft and any right of Lessor (whether as trustee or otherwise) to take possession of the Aircraft in compliance with the provisions of this lease shall not be affected by the provisions of Chapter X of the Federal Bankruptcy Act as amended from time to time.

12.

Notwithstanding any of the above provisions it is further agreed that

(a) This lease agreement is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no rental shall be paid hereunder;

(b) This lease is subject to the necessary consents of the holders of obligations issued by Trans World Airlines, Inc. under its outstanding indentures, chattel [fol. 4199] mortgages and loan agreements. In the absence of such consents no rental shall be paid hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in its name and in its behalf by its officer or agent thereunto duly authorized.

TRANS WORLD AIRLINES, INC.

By.....

HUGHES TOOL COMPANY

By.....

[fol. 4200] EXHIBIT B

HUGHES TOOL COMPANY
2200 GULF BUILDING
HOUSTON 2, TEXAS

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

Attention: Mr. A. V. Leslie

Re: *Purchase of Spare Parts*

Dear Sirs:

This letter will set forth our agreement and understanding concerning the purchase by TWA from Hughes Tool Company of spare parts and provisioning (herein called

"Spares") for use in connection with the operation by TWA of the Boeing Model 707-331 jet aircraft and Convair Model 880 jet aircraft leased by TWA from Hughes Tool Company.

Hughes Tool Company hereby agrees to sell to TWA at Hughes Tool Company's a al cost such Spares as are owned by Hughes Tool Company or are on order by it as TWA may from time to time elect to purchase.

Appropriate accounting procedures should be established for the accurate and prompt recordation of all transactions involving the withdrawing and purchase of Spares.

This agreement and arrangement are subject to approval of the Civil Aeronautics Board, and until an order has been entered by the Civil Aeronautics Board permitting the transactions covered by this agreement no payments shall be made hereunder.

[fol. 4201] If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

Accepted this

day of , 1959

Trans World Airlines, Inc.

by.....
Vice President

[fol. 4202] [Handwritten notation—Original]

[Stamp—Received—Docket Section—Apr. 1, 12:01 PM, '60 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000 - 16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

March 30, 1960

[fol. 4203]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. Hughes has on order from Boeing Airplane Company seven Boeing Model 707-331 jet aircraft at a purchase price of approximately $5,600,000 per aircraft. In addition Hughes has on order thirty Convair Model 880 jet aircraft at a purchase price of approximately $3,930,000 per aircraft.

2. As TWA has previously advised the Board in connection with the leases from Hughes Tool Company of Boeing [fol. 4204] Model 707-131 aircraft, approved by CAB Order No. 14504, and in connection with the leasing from Hughes Tool Company of Boeing Model 707-331 jet aircraft and Convair Model 880 jet aircraft, approved by CAB Order No. 14877, definitive financing plans for TWA's jet aircraft program are being completed.

3. The definitive financing plans contemplate that TWA will acquire title to the jet aircraft heretofore leased by Hughes to TWA as well as to additional Boeing Model 707-331 jet aircraft and Convair Model 880 jet aircraft.

4. The Board in its Order E-14877 approved the leasing by Hughes to TWA of up to eight Boeing Model 707-331 jet aircraft. Five such aircraft have been leased pursuant to Order E-14877. In lieu of leasing additional Boeing Model 707-331 jet aircraft and in order to make such aircraft immediately available to TWA on a permanent basis, Hughes proposes to assign to TWA Hughes' right to acquire two Boeing Model 707-331 jet aircraft and the customer-furnished equipment thereon from the vendor. TWA would acquire such right at Hughes' cost, including advance payments made by Hughes with respect to such aircraft and customer-furnished equipment and interest on advance payments made by Hughes to the vendor with respect thereto. Following such assignment and subject to TWA's acceptance of the aircraft on delivery, TWA proposes to purchase the aircraft from the vendor by payment to the vendor of the balance of the purchase price applicable to such aircraft. Payment to Hughes of its down payments made thereon and interest applicable thereto will be made only [fol. 4205] following approval thereof by the Board.

5. TWA believes that the acquisition of the two Boeing Model 707-331 jet aircraft referred to herein is necessary and desirable for use in TWA's domestic and international operations and that such acquisition is reasonable and in the best interest of TWA.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ C. S. THOMAS
C. S. THOMAS
President

March 30, 1960

[fol. 4206] [Handwritten notation—Original]

[Stamp—Received—Docket Section—Apr. 14, 3:31 PM, '60 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000 - 16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

April 14, 1960

[fol. 4207]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the matter of the application of
HUGHES TOOL COMPANY
for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. As TWA has previously advised the Board definitive financing plans for the TWA jet aircraft program are now being completed. It is anticipated that full details of this program will be worked out shortly. Pending the completion of the details of such program and in order to make an additional Boeing Model 707-331 jet aircraft immediately available to TWA on a permanent basis, Hughes proposes to assign to TWA Hughes' right to acquire a third Boeing Model 707-331 jet aircraft and the customer-furnished [fol. 4208] equipment thereon from the vendor.

As in the case of the two Boeing Model 707-331 jet aircraft covered by TWA's motion to the Board of March 30, 1960, TWA would acquire such right with respect to the third aircraft at Hughes' cost, including advance payments

made by Hughes with respect to such aircraft and customer-furnished equipment and interest on advance payments made by Hughes to the vendor with respect thereto. Following such assignment and subject to TWA's acceptance of the aircraft on delivery, TWA proposes to purchase the aircraft from the vendor by payment to the vendor of the balance of the purchase price applicable to such aircraft. Payment to Hughes of its down payments made thereon and interest applicable thereto will be made only following approval thereof by the Board.

2. Pending completion of the definitive financing program TWA may arrange temporary financing for the third Boeing Model 707-331 jet aircraft on a letter of credit basis, TWA's obligations thereunder to be guaranteed by Hughes.

3. The definitive financing plans for TWA's jet aircraft program contemplate that TWA will acquire title to certain of the Convair Model 880 jet aircraft on order by Hughes. In order to use the Convair Model 880 jet aircraft in its jet training program and subsequently to make use of these aircraft on its certificated routes, it is desirable that TWA have the use of a flight simulator to train its flight crews in [fol. 4209] the operation of the Convair Model 880 jet aircraft.

4. Hughes has on order from Link Aviation, Inc. a flight simulator for the Convair Model 880 jet aircraft at a purchase price of approximately $1,018,550.

5. So that this simulator may be made immediately available to TWA Hughes proposes to assign to TWA Hughes' interest therein upon TWA's agreement to pay Hughes' cost and to assume all liabilities and obligations of Hughes to the vendor, including the payment of the balance of the purchase price.

Following such assignment and subject to TWA's acceptance of the simulator on delivery, TWA proposes to purchase the simulator from the vendor by payment to the vendor of the balance of the purchase price applicable to such simulator. Payment to Hughes of its costs, including down payments made thereon and interest applicable

thereto, will be made only following approval thereof by the Board.

6. Hughes is willing to make said Boeing Model 707-331 jet aircraft and said flight simulator available to TWA on the above basis.

7. The foregoing program is subject to the necessary approvals of the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements.

8. TWA believes that the acquisition of the Boeing Model 707-331 jet aircraft and the flight simulator for the Convair Model 880 jet aircraft is necessary and desirable [fol. 4210] for use in TWA's operations and that such acquisition is reasonable and in the best interests of TWA.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ THOMAS K. TAYLOR
Thomas K. Taylor
Vice President

[fol. 4211] [Handwritten notation—Original]

[Stamp—Received—Docket Section—May 6 4 09 PM '60—Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000 - 16th Street, N. W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

May 6, 1960

[fol. 4212]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the Matter of the Application of
HUGHES TOOL COMPANY
for approval of the acquisition of control of
TRANS WORLD AIRLINES, INC.

MOTION OF TRANS WORLD AIRLINES, INC.
FOR APPROVAL OF TRANSACTIONS WITH
HUGHES TOOL COMPANY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein modifying its Order Serial No. 3210, issued October 17, 1944, as amended, approving the acquisition of control of TWA by Hughes Tool Company (herein referred to as "Hughes") so that the terms of said order will not restrict the right of TWA to enter into the transactions with Hughes more fully described below.

1. Hughes now has on order from Boeing Airplane Company four Boeing Model 707-331 jet aircraft at a purchase price of approximately $5,600,000 per aircraft. In addition Hughes has on order thirty Convair Model 880 jet aircraft at a purchase price of approximately $3,930,000 per aircraft.

2. TWA has previously leased from Hughes, on a day-to-day basis, fifteen Boeing Model 707-131 aircraft and five Boeing Model 707-331 aircraft and such leases have been approved by orders of the Board. TWA has also acquired from Hughes three additional Boeing Model 707-331 aircraft, as set forth in the motions dated March 30, 1960 and April 14, 1960 in this proceeding. TWA, by motions filed with the Board and approved by CAB Order No. 14877,

[fol. 4213] also requested approval of leasing from Hughes additional Boeing Model 707-331 aircraft and certain Convair Model 880 jet aircraft.

As TWA has advised the Board in such motions, definitive financing plans for the TWA jet aircraft program are now being completed. As a part of these plans it is proposed that TWA acquire title to the fifteen Boeing Model 707-131 aircraft and the five Boeing Model 707-331 aircraft now leased by TWA from Hughes. It is also proposed that as a part of such plans Hughes will assign to TWA Hughes' rights in the contracts covering two additional Boeing Model 707-331 jet aircraft and 20 Convair Model 880 jet aircraft and customer-furnished equipment therefor. TWA would also acquire Hughes' interest in, or contract rights covering, the spare parts, equipment and provisioning for such aircraft owned or on order by Hughes.

3. TWA would purchase from Hughes the nineteen jet aircraft under lease to TWA on December 31, 1959 at Hughes' net book value, including interest on Hughes' payments and other costs applicable to such nineteen aircraft. TWA would purchase the jet aircraft leased to TWA after December 31, 1959, Hughes' contract rights in the additional twenty-two jet aircraft and Hughes' interest or contract rights in the spare parts, provisioning and equipment therefor at Hughes' cost, including interest thereon. The existing leases of jet aircraft from Hughes to TWA would be cancelled as of the acquisition of title by TWA, with rental on the jet aircraft leased after December 31, 1959, cancelled from the beginning.

4. The proposed transactions described in paragraphs 2 and 3 hereof are more fully set forth in the form of [fol. 4214] agreement between TWA and Hughes attached hereto as Exhibit A. Such transactions would be in addition to the purchase by TWA from Hughes of the three additional Model 707-331 jet aircraft and the flight simulator for the Convair Model 880 aircraft referred to in TWA's motions dated March 30, 1960 and April 14, 1960 and the purchase by TWA from Hughes of spare parts and provisioning for jet aircraft previously approved by order of the Board.

5. Following assignment of Hughes' contract rights referred to in paragraph 2, and subject to completion of financing arrangements satisfactory to TWA and to TWA's acceptance on delivery, TWA proposes to purchase such aircraft, spare parts, equipment and provisioning from the vendors by payment to the vendors of the balance of the purchase price applicable thereto. Payment to Hughes of its costs therefor, including interest applicable thereto, will be made only following the approval thereof by the Board. It is presently contemplated that one additional Boeing Model 707-331 aircraft, five Convair 880 aircraft, twenty-six spare jet engines and a substantial part of the other spare parts, equipment and provisioning would be thus acquired before June 30, 1960, and that the balance of such purchases would, in large part, be completed prior to November 30, 1960.

6. It is proposed that TWA's acquisition of the jet aircraft, spare parts, provisioning and equipment would be financed by the sale by TWA of $260,000,000 of its securities. Of this $160.000,000 would be senior debt sold to banks and institutional investors and approximately $100,000,000 would be junior securities sold through a rights offering to TWA's stockholders, of which Hughes would agree to purchase a sufficient amount (to the extent such securities are not otherwise sold) to provide TWA with net proceeds of $100,000,000. The junior securities would be either in the form of subordinated debentures convertible into com-
[fol. 4215] mon stock, subordinated debentures with detachable common stock purchase warrants, or common stock, or a combination thereof. Any debentures would be subordinated to the senior debt and all other borrowings of TWA, with interest payable only if earned, but cumulative. TWA's note in the principal amount of $5,811,000, due on December 1, 1960, plus interest, held by Hughes, will be applied by Hughes as part payment on its share of the junior securities, as will a portion of the payments that will be payable by TWA to Hughes for jet aircraft, spare parts, equipment and provisioning, as set forth in paragraph 3 hereof. In addition, Hughes will, if needed, advance to TWA on a subordinated basis not to exceed $50,000,000

to enable TWA to carry out the permanent financing plan and to maintain TWA's net working capital at not less than $10,000,000 until completion of TWA's acquisition of the jet equipment referred to in paragraph 2 hereof.

7. Pending completion of the definitive financing program, referred to in paragraph 6, which is proposed to be accomplished by June 1, 1960, TWA would borrow approximately $50,000,000 from banks on a short term basis payable upon completion of the permanent financing, secured by mortgages on certain of the jet aircraft which TWA would acquire from Hughes and the manufacturers. These temporary loans would be guaranteed by Hughes. They would be paid out of the proceeds of the long term financing. In connection with the temporary financing TWA would acquire from Hughes three of the twenty jet aircraft now leased by TWA from Hughes. During this interim period payments to Hughes with respect to jet aircraft, spare parts, equipment and provisioning would be made by [fol. 4216] means of subordinated obligations of TWA, payable upon completion of the permanent financing. As a part of this program Hughes will guarantee TWA's 3¾% Equipment Mortgage Sinking Fund Bonds, due December 1, 1969, as they may be amended in connection with this temporary financing.

8. This program is subject to any necessary approvals of the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements.

9. TWA believes that the acquisition of the aircraft, spare parts, provisioning and equipment referred to herein are necessary and desirable for use in TWA's domestic and international operations, and that their acquisition on the terms here set forth, the financing program therefor and the proposed transactions with Hughes to carry out these programs are reasonable and in the best interest of TWA.

Wherefore, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying its

Order Serial No. 3210, as amended, so that its order will permit TWA to enter into transactions with Hughes Tool Company described above.

Respectfully submitted,

/s/ THOMAS K. TAYLOR
~~G. S. Thomas~~
Vice-President

May 6, 1960

[fol 1217] EXHIBIT A

HUGHES TOOL COMPANY
Gulf Building
Houston 2, Texas

May 9, 1960

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Attention: Mr. A. V. Leslie

Re: Purchase of Boeing Model 707-131 and 707-331 Jet Aircraft and Convair Model 880 Jet Aircraft

Dear Sirs:

If accepted by you this proposal will state our agreement and understanding concerning the conditions under which Trans World Airlines, Inc. (hereinafter called "TWA") may acquire from Hughes Tool Company (hereinafter called "Hughes") Hughes' interest in Boeing Model 707-131 and Boeing Model 707-331 jet aircraft, Convair Model 880 jet aircraft and spare parts, equipment and provisioning therefor.

1. Hughes hereby agrees to sell to TWA and, subject to the provisions of paragraph 9(c) hereof, TWA agrees to purchase from Hughes two Boeing Model 707-131 jet aircraft, Manufacturer's Serial Nos. 17671 and 17672, FAA Nos. N744TW and N745TW respectively, manufactured by Boeing Airplane Company and one Boeing Model 707-331

jet aircraft, Manufacturer's Serial No. 17679, FAA No. N765TW, manufactured by Boeing Airplane Company under Purchase Agreement No. 9 dated March 19, 1956, as amended, between Boeing Airplane Company and Hughes (hereinafter called the "331 Purchase Agreement").

Upon notice from TWA prior to June 30, 1960, Hughes shall transfer good title to such three aircraft to TWA free [fol. 4218] and clear of all liens and encumbrances. TWA shall pay to Hughes Hughes' net book value of aircraft FAA Nos. N744TW and N745TW on the date title thereto is transferred from Hughes to TWA. As to aircraft FAA No. N765TW, TWA shall pay Hughes Hughes' undepreciated cost with respect to such aircraft.

As used herein and elsewhere in this agreement Hughes' net book value with respect to any aircraft shall mean the sum of

(i) The amounts Hughes shall have paid Boeing Airplane Company for such aircraft;

(ii) The amounts Hughes shall have paid vendors of customer-furnished equipment thereon;

(iii) All other costs of Hughes, including expenses, in connection with such aircraft, and

(iv) An amount representing interest on items (i), (ii) and (iii), at a rate per annum to be negotiated between the parties prior to the closing of TWA's long-term financing plan (computed on the average amount of the outstanding payments applicable to such aircraft by considering the payments made as outstanding from the respective dates such payments were made and until delivery of such aircraft to TWA under the respective day-to-day leases of such aircraft from Hughes to TWA);

such cost to Hughes to be depreciated (a) as to airframes, over a 10-year life with a 10% residual value, (b) as to JT-3 engines, over a 5-year life with a 10% residual value and (c) as to JT-4 engines, over a 7-year life with a 10% residual value.

[fol. 4219] As used herein and elsewhere in this agreement Hughes' undepreciated cost with respect to any aircraft, equipment, spare parts or provisioning shall mean the sum of

(i) The amounts Hughes shall have paid the vendors with respect thereto (including the amounts paid the vendors of customer-furnished equipment with respect to an aircraft);

(ii) All other costs, including expenses, in connection with the aircraft or other property, and

(iii) An amount representing interest on items (i) and (ii) at a rate per annum to be negotiated between the parties prior to the closing of TWA's long-term financing plan (computed on the average amount of the outstanding payments applicable to such aircraft or other property by considering the payments made as outstanding from the respective dates such payments were made and until the acquisition of such aircraft or property by TWA under this agreement).

2. Hughes hereby assigns to TWA the rights of Hughes to acquire from Boeing Airplane Company 2 Boeing Model 707-331 jet aircraft (Manufacturer's Serial Numbers 17685 and 17690) currently being manufactured by Boeing Airplane Company under the 331 Purchase Agreement. Subject to the provisions of paragraph 9(c) hereof, TWA agrees to purchase from the manufacturer pursuant to the 331 Purchase Agreement each such aircraft when manufactured in accordance with the terms of the 331 Purchase Agreement and tendered for delivery pursuant thereto. In exercising such rights to acquire each aircraft TWA shall pay Boeing Airplane Company the balance of the purchase price of said aircraft and shall agree to pay to the vendors [fol. 4220] involved the balance due for customer-furnished equipment installed on such aircraft. In addition, TWA shall pay Hughes Hughes' undepreciated cost with respect to such aircraft.

3. Hughes hereby assigns to TWA the rights of Hughes to acquire from General Dynamics Corporation 20 Convair

Model 880 jet aircraft currently being manufactured by General Dynamics Corporation under Purchase Agreement, dated as of September 10, 1956, as amended, between General Dynamics Corporation and Hughes (hereinafter called the "880 Purchase Agreement"). The 20 Convair Model 880 jet aircraft covered by such assignment are more specifically described in Exhibit 1 hereto.

Subject to the provisions of paragraph 9(c) hereof, TWA agrees to purchase from the manufacturer pursuant to the 880 Purchase Agreement each such aircraft when manufactured in accordance with the terms of the 880 Purchase Agreement and tendered for delivery pursuant thereto. In exercising such rights to acquire each aircraft TWA shall pay General Dynamics Corporation the balance of the purchase price of said aircraft and shall agree to pay to the vendors involved the balance due for customer-furnished equipment installed on such aircraft. In addition, TWA shall pay Hughes Hughes' undepreciated cost with respect to such aircraft.

4. Hughes hereby confirms that TWA has the exclusive right and privilege to acquire from Hughes the 13 Boeing Model 707-131 jet aircraft and 4 Boeing Model 707-331 jet aircraft heretofore leased to TWA on a day-to-day basis and not covered by paragraph 1 hereof, said aircraft being more specifically described in Exhibit 2 attached hereto. Subject to the provisions of paragraph 9(c) hereof, Hughes will sell and TWA will purchase such 17 aircraft upon the [fol. 4221] terms and conditions outlined in paragraph 5 hereof.

5. TWA may purchase the aircraft referred to in paragraph 4 hereof by at least two days' notice to Hughes given on or prior to June 30, 1960 and upon payment to Hughes of Hughes' net book value thereof. Hughes agrees that upon such payment by TWA it will transfer to TWA good title to such aircraft, free and clear of all liens and encumbrances.

6. Hughes hereby confirms that TWA has the exclusive right and privilege to acquire from Hughes Hughes' right to acquire from the manufacturers, or Hughes' interest in, as the case may be, the spare engines for the Boeing 331

and Convair 880 jet aircraft, more specifically described in Exhibit 3, and all other spare parts, equipment and provisioning owned or on order by Hughes for the Boeing or Convair jet aircraft (such engines, spare parts, equipment and provisioning hereinafter referred to as the "Spares").

7. Subject to the provisions of paragraph 9(c) hereof, TWA agrees to purchase the Spares from time to time, from the vendors or Hughes, as the case may be, (a) as to Spares of which title has vested in Hughes upon payment to Hughes of Hughes' undepreciated cost and (b) as to the remainder, upon payment of Hughes' undepreciated cost and TWA's agreement to assume all liabilities and obligations of Hughes to the manufacturers applicable to the Spares acquired by TWA, including the payment of any balance of the purchase price. Upon notice from TWA to Hughes, specifying such Spares, Hughes will transfer to TWA good title, free and clear of all liens and encumbrances, to such Spares that are owned by Hughes and all Hughes' rights as to other Spares specified in such notice.

8. Payments from TWA to Hughes pursuant to this agreement up to a total of $100,000,000 (less the principal amount of $5,811,000 on TWA's note, due December 1, 1960, [fol. 4222] held by Hughes, plus interest thereon) may be made by means of subordinated debentures of TWA in the form that such subordinated debentures may be offered to all stockholders of TWA in connection with the proposed financing plan of TWA. Pending the issuance of subordinated debentures in connection with such financing plan, payments from TWA to Hughes pursuant to this agreement shall be made by delivery to Hughes of subordinated notes, on which interest is payable only if earned and on which no principal payment will be made so long as any senior debt is outstanding except out of the proceeds of the sale of subordinated obligations issued under the definitive financing program or of the sale of capital stock. The interest rate on such subordinated notes, and on the subordinated obligations issuable by TWA to Hughes pursuant to agreements between TWA and Hughes dated April 1, 1960 and April 14, 1960, respectively, shall be the same as that agreed upon by TWA and the lending banks for the tem-

porary loans to TWA pending completion of the proposed definitive financing program for TWA.

9. Notwithstanding any of the above provisions it is further agreed that:

(a) This agreement is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no sums shall be payable by TWA to Hughes hereunder.

(b) This agreement is subject to the necessary consents of the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements. TWA will diligently endeavor to secure such consents, but in the absence of such consents no sums shall be payable by TWA to Hughes hereunder.

[fol. 4223] (c) TWA's obligation to make any payment, deliver any subordinated obligations or assume any liabilities or other obligations with respect to the purchase of any aircraft or other property hereunder is in each case subject to completion of financing arrangements (either temporary or definitive) relating thereto completely satisfactory to TWA.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

HUGHES TOOL COMPANY

By

Accepted this day
of May, 1960

TRANS WORLD AIRLINES, INC.

By

[fol. 4224]

EXHIBIT 1

Description of Convair 880 Jet Aircraft Assigned to TWA

Model 880 Manufacturing Number Assigned by Convair	Month in which Delivery Is Presently Scheduled
10	May
20	"
22	"
24	June
25	"
27	July
28	"
31	"
2	"
32	Aug.
33	"
35	"
3	Sept.
40	"
42	"
14	Oct.
15	"
19	"
6	Nov.
8	"

[fol. 4225]

EXHIBIT 2

DESCRIPTION OF AIRCRAFT

Boeing Model 707-131 Jet Aircraft, FAA No.	Date of Lease
N731TW	January 30, 1959
N732TW	March 17, 1959
N733TW	March 30, 1959
N734TW	April 3, 1959
N735TW	April 18, 1959
N736TW	April 29, 1959
N737TW	May 10, 1959
N738TW	May 13, 1959
N740TW	May 24, 1959
N739TW	May 28, 1959
N741TW	June 13, 1959
N742TW	July 1, 1959
N743TW	July 10, 1959

Boeing Model 707-331 Jet Aircraft, FAA No.	Date of Lease
N762TW	November 6, 1959
N761TW	November 8, 1959
N763TW	November 17, 1959
N764TW	December 27, 1959

[fol. 4226]

Exhibit 3

Description of Spare Engines to be Assigned to TWA

General Electric Aircraft Engines
Model CJ805 for the Convair 880 Aircraft[1]

30 Model CJ805 aircraft engines being manufactured by General Electric Company under contract with Hughes Tool Company, dated October 1, 1956, said engines to be assigned to TWA in accordance with TWA's needs currently estimated as follows:

May	1
June	8
July 1 to 15	5
July 16 thru 31	2
August	4
September	5
October	4
November	1
	30

Pratt & Whitney Aircraft Engines
Model JT4A[2]

10 Pratt & Whitney aircraft engines Model JT4A on order by Hughes Tool Company from United Aircraft Corporation under contract dated February 14, 1956 and from Boeing Airplane Company under contract dated January 14, 1959, such engines to be assigned to TWA in accordance with its needs currently estimated to be at the rate of one engine per week commencing May 2, 1960.

---

[1] TWA has heretofore succeeded to the interest of Hughes Tool Company in 8 CJ805 engines per telegram agreements dated April 25, 1960. The engines herein described are in addition to the first 8 of such engines covered by the April 25 order.

[2] TWA has heretofore succeeded to the interest of Hughes Tool Company in 25 JT4A engines manufactured by United Aircraft Corporation under contract dated February 14, 1956. The engines herein described are in addition to said 25 engines.

[fol. 4227]

[Stamp—Received—Docket Section—Jul 1 4 45 PM '60 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000—16th Street, N.W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

July 1, 1960

[fol. 4228]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS WITH HUGHES TOOL COMPANY

1. By motion in this proceeding dated May 6, 1960 TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") advised the Board with respect to definitive financing plans for the TWA jet aircraft program under which it was proposed that TWA would acquire title to 15 Boeing Model 707-131 jet aircraft, 10 Boeing Model 707-331 jet aircraft, 20 Convair Model 880 jet aircraft and the spare parts, equipment and provisioning therefor previously acquired or ordered by Hughes Tool Company (herein referred to as "Hughes"). The proposed transactions between TWA and Hughes relating to such financing program, outlined in such motion of May 6, 1960 and in TWA's motions in this proceeding of March 30, 1960 and April 14, 1960, were approved by Board Order No. E-15430, dated June 23, 1960.

2. It is now proposed that the foregoing program be supplemented so that TWA will acquire title to 2 additional Boeing Model 707-331 aircraft, making a total of [fol. 4229] 12 such aircraft that TWA will receive, and so that TWA will also acquire title to 5 additional spare engines for Boeing Model 707-331 aircraft. Such acquisition by TWA would be covered by the amendment to the agree-

ment of May 9, 1960 effected by the agreement attached hereto as Exhibit A. The acquisition of the additional aircraft and engines would be on the same terms and conditions as the transactions set forth in TWA's motions in this proceeding referred to in paragraph 1 hereof and approved by Board Order No. E-15430, dated June 23, 1960. To finance the acquisition of these additional aircraft and engines the senior debt to be sold to banks and institutional investors, referred to in paragraph 6 of TWA's motion of May 6, 1960, would be increased from $160,000,000 to $168,800,000.

3. In implementation of the prior agreements between TWA and Hughes referred to in the motion of May 6, 1960 and approved by Order No. E-15430, and as a part of the long-term financing program outlined in such motion, TWA proposes to enter into various agreements with lending banks, insurance companies, indenture trustees and others, including Hughes. Among these agreements are the following:

(a) A proposed agreement (in substantially the form attached hereto as Exhibit B) between TWA, Hughes and the holders of the senior debt referred to in paragraph 6 of TWA's motion dated May 6, 1960, defining in more detail the terms of the subordinated obligations to be issued by TWA to Hughes and Hughes' obligation to advance TWA up to $50,000,000 on a subordinated basis, if needed, providing for the issuance by TWA of interim subordinated notes in payment of amounts due by TWA to Hughes pending the completion of the public offering of TWA's [fol. 4230] subordinated debentures and outlining some of the terms of the public offering.

(b) A proposed Final Accounting and Debenture Purchase Agreement between TWA and Hughes (in substantially the form attached hereto as Exhibit C), which implements the transactions between the two companies outlined in the motion of May 6, 1960, as supplemented by the agreement referred to in paragraph 2 hereof, sets forth the method by which TWA's obligations to Hughes

will be settled, and establishes certain of the terms of, and a procedure for determining other terms of, the public offering of TWA's subordinated debentures within the conditions specified in the agreement referred to in paragraph 3(a) hereof.

(c) A proposed Three Party Agreement between Hughes, TWA and Irving Trust Company, as Notes Agent, representing the holders of TWA's senior debt (substantially in the form attached hereto as Exhibit D), providing that in the event of default by TWA under certain covenants in the indenture securing such borrowing, Hughes would subject to a voting trust agreement all shares of the common stock of TWA held by Hughes.

4. Save for the desirable supplementing of TWA's Boeing Model 707-331 jet aircraft fleet by the addition of 2 more aircraft and spare engines described in paragraph 2 hereof, the proposed agreements referred to above do not change the substance of the transactions between TWA and Hughes outlined in TWA's motions of March 30, 1960, April 14, 1960 and May 6, 1960, approved by Order No. [fol. 4231] E-15430. To the extent that the consummation of the transactions outlined herein requires further approval from the Board in this proceeding, the issuance by the Board of an appropriate order, to enable TWA to conclude its long-term financing program, would be in the public interest.

WHEREFORE, Trans World Airlines, Inc. respectfully prays that the Board enter an order herein modifying its Order Serial No. 3210, as amended, so that its order will permit TWA to enter into such additional transactions with Hughes Tool Company as are described above and to consummate its proposed long-term financing program.

Respectfully submitted,

/s/ A. V. LESLIE
A. V. Leslie
Senior Vice President—Finance
and Treasurer

July 1, 1960

[fol. 4232]

Exhibit A

HUGHES TOOL COMPANY
GULF BUILDING
HOUSTON 2, TEXAS

June 30, 1960

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, N. Y.

Attention: Mr. A. V. Leslie

Re: Purchase of Boeing Model 707-131 and 707-331 Jet Aircraft and Convair Model 880 Jet Aircraft

Dear Sirs:

This will confirm our understanding that the agreement between us, dated May 9, 1960, on this same subject, is amended in the following respects:

1. The date "June 30, 1960" in paragraph 5 thereof is changed to "July 31, 1960".

2. The first sentence of paragraph 2 thereof is changed to read as follows:

"Hughes hereby assigns to TWA the rights of Hughes to acquire from Boeing Airplane Company four Boeing Model 707-331 jet aircraft (Manufacturer's Serial Nos. 17685, 17687, 17688 and 17690) manufactured by Boeing Airplane Company under the 331 Purchase Agreement."

3. Exhibit 3 thereof is amended by changing the reference to "10 Pratt & Whitney aircraft engines Model JT4A" to "15 Pratt & Whitney aircraft engines Model JT4A".

Pending the issuance of any order by the Civil Aeronautics Board that may be required with respect to the transactions contemplated hereby no sums shall be payable

by TWA to Hughes with respect to the 2 additional Boeing Model 707-331 jet aircraft and the spare engines therefor added to the agreement of May 9, 1960 by this amendment thereof. This amendment will not become effective until any necessary consents have been obtained from the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements.

[fol. 4233] If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

HUGHES TOOL COMPANY

By

Accepted as of the 30th day
of June 1960

TRANS WORLD AIRLINES, INC.

By

[fol. 4234]

Exhibit B

AGREEMENT

AMONG

TRANS WORLD AIRLINES, INC.

AND

HUGHES TOOL COMPANY

AND

IRVING TRUST COMPANY, as Bank Agent

AND

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES and METROPOLITAN LIFE INSURANCE COMPANY

AND

CHEMICAL BANK NEW YORK TRUST COMPANY, as Trustee

HUGHES FINANCING AND SUBORDINATION AGREEMENT

Dated July , 1960

[fol. 4235] AGREEMENT dated July , 1960 among TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called "*TWA*"), party of the first part, HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "*Hughes*"), party of the second part, IRVING TRUST COMPANY, a New York trust company, as agent for the hereinbelow-mentioned Banks (hereinafter called the "*Bank Agent*"), party of the third part, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation

(hereinafter called *"Equitable"*), and METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation (hereinafter called *"Metropolitan"*), parties of the fourth part, and CHEMICAL BANK NEW YORK TRUST COMPANY, a New York trust company, (hereinafter called the *"Trustee"*), party of the fifth part.

WITNESSETH:

WHEREAS, pursuant to a program (hereinafter called the *"Jet Flight Equipment Program"*) for the modernization of its aircraft fleet, (a) TWA has acquired and now owns Boeing Model 707-131 aircraft, Boeing Model 707-331 aircraft, Convair Model 880 aircraft and certain related spare jet engines, spare parts, equipment and provisioning (hereinafter called *"spares"*) required by TWA to operate such aircraft, (b) TWA has acquired by assignment from Hughes the right to acquire from the manufacturers, pursuant to contracts between the manufacturers and Hughes, additional Boeing Model 707-331 aircraft, additional Convair Model 880 aircraft and certain related spares required by TWA to operate such aircraft and the aircraft referred to in clause (a) of this recital, and (c) TWA has the right to acquire from the manufacturers, pursuant to contracts between the manufacturers and TWA, certain related spares required by TWA to operate the aircraft referred to in clauses (a) of the second sentence of § 2.8.

WHEREAS Hughes is the owner of not less than 5,221,301 shares of Common Stock, par value $5 per share, of TWA, comprising approximately 78% of the outstanding 6,674,155 [fol. 4236] shares of Common Stock of TWA; and

WHEREAS TWA has executed and delivered to the Trustee an Indenture of Mortgage dated as of July 1, 1960 (hereinafter called the *"Note Indenture"*), which provides for (a) the delivery of $74,000,000 principal amount of 6% Equipment Mortgage Serial Notes of TWA, maturing serially on June 30, 1961, and quarterly thereafter through June 30, 1964 (hereinafter called *"Serial Notes"*), and (b) the issuance of $94,800,000 principal amount of 6½%

Equipment Mortgage Sinking Fund Notes of TWA, due June 30, 1972 (hereinafter called "*Sinking Fund Notes*"), all said Serial Notes and Sinking Fund Notes being hereinafter collectively called the "*Notes*"; and

WHEREAS, in order to finance part of the cost of the Jet Flight Equipment Program, TWA has entered into an agreement dated as of July , 1960 (hereinafter called the "*July 1960 Loan Agreement*"), with Irving Trust Company and the other Banks named therein (hereinafter collectively called the "*Banks*") and the Bank Agent, pursuant to which the Banks have agreed to lend an aggregate of $74,000,000 to TWA, such loans to be evidenced by an equal aggregate principal amount of Serial Notes; and

WHEREAS, in order to finance part of the cost of the Jet Flight Equipment Program, TWA has entered into agreements dated July , 1960 (hereinafter called the "*Note Purchase Agreements*"), with Equitable and Metropolitan (hereinafter together called the "*Insurance Companies*"), pursuant to which the Insurance Companies have agreed to purchase from TWA an aggregate of $94,800,000 principal amount of Sinking Fund Notes; and

WHEREAS it is a condition precedent to the obligation of the Banks to advance any moneys to TWA pursuant to the July 1960 Loan Agreement, and it is a condition precedent to the obligations of the Insurance Companies to purchase any Sinking Fund Notes from TWA pursuant to the Note [fol. 4237] Purchase Agreements, that this Agreement shall have been duly executed and delivered by the parties thereto; and

WHEREAS the Bank Agent has been duly authorized by the Banks to enter into this Agreement;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree with each other as hereinbelow set forth:

ARTICLE ONE

Financing Provisions

§ 1.1. TWA shall issue to Hughes, and Hughes shall accept from TWA, on the First Closing Date (which term, as used herein, means the date designated pursuant to the July 1960 Loan Agreement as the date on which the Banks will make the first advance of moneys to TWA thereunder and the date specified in the Note Purchase Agreements as the date on which the Insurance Companies will make the first purchase of Sinking Fund Notes from TWA thereunder), $100,000,000 principal amount of subordinated promissory notes of TWA (hereinafter called *"Interim Subordinated Notes"*), in payment *pro tanto* of the amounts owing by TWA to Hughes on the First Closing Date. The Interim Subordinated Notes shall be dated the date of delivery thereof, shall bear interest at such rate (not exceeding 7% per annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable only if earned (except as otherwise permitted by § 1.4 hereof) but may be cumulative, shall be stated to mature not earlier than December 31, 1972 (except as otherwise permitted by § 1.4 hereof), and shall contain the notation and statement required by clause (a) of the second sentence of § 2.8 hereof.

§ 1.2. TWA shall proceed as soon as practicable, and in any event not later than November 30, 1960, to make an offer (hereinafter called the *"Subscription Offer"*) to the holders of its Common Stock, pursuant to which it will grant to such stockholders the right to subscribe, ratably [fol. 4238] in proportion to the number of shares of Common Stock held by them on the record date fixed by TWA for the determination of stockholders entitled to receive the Subscription Offer, for an aggregate of not less than $100,000,000 principal amount of subordinated debentures of TWA (hereinafter called *"Subordinated Debentures"*) at a subscription price, payable in cash (except as otherwise permitted by § 1.4 hereof), of not less than 100% of the principal amount of such Subordinated Debentures. The Subordinated Debentures may be convertible into Common Stock of TWA, or may carry the right, by accompany-

ing or attached warrants or otherwise, to purchase additional shares of Common Stock of TWA, at such price or prices and during such period or periods as TWA shall determine. The Subordinated Debentures shall bear interest at such rate (not exceeding 7% per annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable only if earned, but may be cumulative, shall be stated to mature not earlier than December 31, 1972, and shall contain provisions substantially identical with those contained in § 2.2 to § 2.6, inclusive, of this Agreement, specifically subordinating the Subordinated Debentures to the payment in full of the Notes and of all other Senior Indebtedness of TWA (as defined in § 2.1 hereof) to the extent provided in § 2.2 to § 2.6, inclusive, of this Agreement and a statement to the effect that each holder of Subordinated Debentures by his acceptance thereof agrees to be bound by all such subordination provisions.

§ 1.3. Hughes shall purchase from TWA, and TWA shall issue and sell to Hughes, not later than three business days after the expiration of the Subscription Offer (and not later in any event than December 31, 1960), at a price not less than the subscription price specified in the Subscription Offer, such principal amount of Subordinated Debentures as shall be equal to the difference between (a) $100,000,000, and (b) the aggregate principal amount of Subordinated Debentures subscribed for pursuant to the Subscription Offer (including any Subordinated Debentures thus subscribed for by Hughes), *provided, however,* that the maximum aggregate principal amount of Subordinated Debentures which Hughes shall be required to purchase [fol. 4239] from TWA and TWA shall be required to issue and sell to Hughes, pursuant to the Subscription Offer and this § 1.3, shall not exceed $100,000,000, although Hughes shall be entitled at its option (without any consent or other action by the parties hereto, other than TWA) to purchase from TWA a greater principal amount of Subordinated Debentures.

§ 1.4. It is understood that TWA shall pay or refund the Interim Subordinated Notes issued by it to Hughes, pursuant to § 1.1 hereof, upon the purchase by Hughes of

Subordinated Debentures, pursuant to § 1.3 hereof, and Hughes shall accept such Subordinated Debentures in any such refunding of the Interim Subordinated Notes up to the aggregate principal amount of Subordinated Debentures which Hughes is so obligated to purchase. Such refunding will be effected (a) by the application by TWA of moneys received from the sale of the Subordinated Debentures, pursuant to the Subscription Offer or to Hughes pursuant to § 1.3 hereof, to redeem and retire all the Interim Subordinated Notes at a redemption price in cash equal to the principal amount thereof plus all interest then accrued and unpaid thereon, or (b) by TWA accepting Interim Subordinated Notes, at the principal amount thereof, in payment for the Subordinated Debentures which Hughes has agreed to purchase pursuant to § 1.3 hereof, and by TWA paying the accrued and unpaid interest on such Interim Subordinated Notes, in cash, to the extent permitted by § 4.30C of the Note Indenture, or, to the extent that such cash payment is not so permitted, by Hughes accepting additional Subordinated Debentures, at the principal amount thereof, in payment of such accrued and unpaid interest, or (c) by any combination of (a) and (b) agreed upon between TWA and Hughes, or (d) in such other manner as may be agreed upon between TWA and Hughes, with the written consent of the Bank Agent and the Insurance Companies.

§ 1.5. Hughes hereby establishes a revolving credit (hereinafter called the *"Credit"*) in favor of TWA in the aggregate principal amount of $50,000,000, for the period commencing with the date hereof and ending on the last [fol. 4240] day of the month next following the month in which TWA shall take delivery of and pay for the last aircraft (hereinafter called the *"Last Aircraft"*) which TWA has the right to acquire at the date hereof under its Jet Flight Equipment Program. The Credit shall expire and terminate on the last day of such period.

§ 1.6. As promptly as possible, but in no event more than 25 days, after the end of each month from July, 1960, to and including the month in which TWA shall take delivery of and pay for the Last Aircraft, TWA will furnish

a copy of its balance sheet as of the last day of such month to each of the parties hereto. If the Net Working Capital of TWA, as shown by said balance sheet, shall be less than $10,000,000, TWA shall borrow from Hughes and Hughes shall lend to TWA, under the Credit, an amount equal to the deficiency (or the amount of the Credit then unused, if that be smaller), each loan so made to be evidenced by a subordinated note of TWA (hereinafter called an *"Interim Subordinated Obligation"*), dated the date the loan is made, maturing on the date the Credit expires, bearing interest at such rate (not exceeding 7% per annum), as shall be agreed upon by TWA and Hughes, which interest shall be payable only to the extent permitted by § 1.7 and § 1.8 hereof and containing the notation and statement required by clause (a) of the second sentence of § 2.8 hereof; *provided, however,* that Hughes shall not be obligated to make any such loan under the Credit at any time when the aggregate principal amount of Interim Subordinated Obligations outstanding under the Credit equals $50,000,000. Each such loan shall be made five business days after TWA furnishes said balance sheet to Hughes, or on such earlier date as may be agreed upon between Hughes and TWA. The term "Net Working Capital", as used in this Section and in § 1.7 and § 1.8 hereof shall mean, at any date, the excess of the Current Assets over the Current Liabilities (both as defined in § 1.3 of the Note Indenture) of TWA at such date, *provided, however,* that the principal of the Interim Subordinated Obligations shall be excluded from Current Liabilities in any such computation of Net Working Capital.

§ 1.7. If any balance sheet furnished by TWA pursuant to § 1.6 hereof shall show that the Net Working Capital [fol. 4241] of TWA exceeded $10,000,000 on the date thereof, TWA shall, at the request of Hughes made within five business days after TWA shall have furnished said balance sheet to Hughes, apply all or any part of such excess, to the extent required, first to the payment of the accrued and unpaid interest on, and then to the payment of the principal of, any Interim Subordinated Obligations at the time outstanding under the Credit.

§ 1.8. On the day the Credit expires, TWA shall pay in cash, to the extent permitted by § 4.30C of the Note Indenture, the accrued and unpaid interest on any Interim Subordinated Obligations then outstanding under the Credit and TWA shall deliver to Hughes in exchange for said Interim Subordinated Obligations and in satisfaction of any accrued and unpaid interest thereon to the extent not permitted to be paid by § 4.30C of the Note Indenture, a new subordinated note (hereinafter called the "*Subordinated Obligation*") for a principal amount equal to the principal amount of said Interim Subordinated Obligations and any such interest not paid in cash, dated the date of delivery, stated to mature not earlier than December 31, 1972, and bearing interest at such rate (not exceeding 7% per annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable only if earned, but may be cumulative. The Subordinated Obligation shall contain the notation and statement required by clause (a) of the second sentence of § 2.8 hereof.

§ 1.9. As promptly as possible, but in no event more than 25 days, after the end of each month in which the Subordinated Obligation is outstanding, TWA will furnish a copy of its balance sheet as of the last day of such month to each of the parties hereto. If the Net Working Capital of TWA, as shown by said balance sheet, shall exceed $15,000,000, TWA shall, at the request of Hughes made within five business days after TWA shall have furnished said balance sheet to Hughes, apply all or any part of such excess, to the extent required, to the payment of the principal of the Subordinated Obligation; *provided, however,* that no such payment shall be made (a) unless and until all cumulative interest accrued on the Subordinated Debentures to the last interest payment date immediately [fol. 4242] preceding such payment shall have been earned and paid in full, or (b) if the making of such payment would constitute a default in the performance or observance of any covenant or agreement of TWA in the Note Indenture.

ARTICLE TWO

Subordination Provisions

§ 2.1. For all purposes of this Article Two:

(a) "*Senior Indebtedness*" shall mean (except as otherwise provided in § 2.7 hereof) (i) the Notes, (ii) any other obligations of TWA for money borrowed (other than for money borrowed from Hughes) which shall not have been specifically subordinated to the prior payment of the Notes at the time such obligations shall be incurred by TWA in the instrument creating or evidencing the same, and (iii) any obligations issued in renewal, extension, refunding, amendment or modification of any of the Notes or such other obligations.

(b) "*Guaranteed Obligations*" shall mean (i) any indebtedness or other obligation of TWA, payment of the principal of, premium, if any, or interest on which shall have been guaranteed by Hughes subsequent to the date of this Agreement, and (ii) any other obligation of TWA, the performance of which shall have been guaranteed by Hughes subsequent to the date of this Agreement.

(c) "*Subordinated Indebtedness*" shall mean all indebtedness which is not Senior Indebtedness and shall include (i) the Interim Subordinated Notes, (ii) the Subordinated Debentures, (iii) the Interim Subordinated Obligations, (iv) the Subordinated Obligation, (v) any indebtedness of TWA to Hughes arising by reason of money borrowed by TWA from Hughes or advances made by Hughes to or for account of TWA, (vi) any indebtedness of TWA to Hughes arising by reason of any payments made by Hughes under any guaranty by Hughes of any Guaranteed Obligations, and all rights and claims of Hughes against TWA so arising, and (vii) any obligations issued in renewal, extension, refunding, amending or modification of any of the foregoing.

(d) *"Hughes"* shall mean, in addition to Hughes Tool Company, any person, firm or corporation (ex-
[fol. 4243] cept TWA and its subsidiaries) directly or indirectly controlling, controlled by or under common control with Hughes Tool Company, and any corporation which shall have acquired all or substantially all the assets of Hughes Tool Company by purchase, merger, consolidation or otherwise.

(e) *"TWA"* shall mean, in addition to Trans World Airlines, Inc., any corporation which shall have acquired all or substantially all the assets of Trans World Airlines, Inc. by purchase, merger, consolidation or otherwise.

(f) *"Payment"* shall mean any payment or distribution of any kind or character, or setting aside therefor whether in cash, securities or other property, made, given or permitted, directly or indirectly, by set off, redemption or other retirement, purchase or other acquisition or in any other manner, for the account of or by TWA, or the giving, or the realizing upon, any security, and shall include any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or part of the assets of TWA or the proceeds thereof, to any creditors of TWA or in respect of any indebtedness of TWA, including any such distribution, division or application by reason of any liquidation, dissolution or winding up of TWA or its business or by reason of any sale, receivership, insolvency or bankruptcy proceedings or assignment for the benefit of creditors or any proceeding by or against TWA for any relief under the bankruptcy, reorganization or insolvency laws, Federal or state, or any law, Federal or state, relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension. The issue of Subordinated Indebtedness in exchange for a like principal amount of other Subordinated Indebtedness shall not be deemed to constitute payment.

(g) *"Reorganization securities"* shall mean any securities or other property delivered in any proceeding referred to in § 2.3 hereof directly to the holders of the Senior Indebtedness or to the Trustee, or delivered to the holders of the Subordinated Indebtedness and by them delivered to the holders of the Senior Indebtedness or to the Trustee, pursuant to any provision of this Article Two.

(h) *"Payment in full"* and *"paid in full"*, in respect of the Senior Indebtedness, shall mean payment in full in cash of the aggregate amount of the principal and [fol. 4244] premium, if any, of, the indebtedness represented by, and the interest on (including interest on overdue principal, premium and interest, to the extent permitted by law), the Senior Indebtedness, (i) by the direct payment in cash of such aggregate amount to the holders of the Senior Indebtedness, or (ii) by the realization of such aggregate amount in cash through the sale or other disposition of any property mortgaged or pledged as security for the Senior Indebtedness, and the payment to the holders of the Senior Indebtedness of the cash so realized, or (iii) by the realization of such aggregate amount in cash through the sale or other disposition of reorganization securities delivered to the holders of the Senior Indebtedness or to the Trustee under any provision of this Article Two, and the payment to the holders of the Senior Indebtedness of the cash so realized, or (iv) through any combination of the payments described in the foregoing clauses (i), (ii) and (iii) which shall result in the payment in cash of such aggregate amount to the holders of the Senior Indebtedness. For the purposes of the foregoing definition, the term "payment in cash" shall include any provision for such payment contemplated by subdivision (a) of § 2.3 hereof.

§ 2.2. Except as otherwise provided in § 2.6 hereof, all the Subordinated Indebtedness shall be, and hereby is, subordinated and subject in right of payment to the prior payment in full of all the Senior Indebtedness (other than

Senior Indebtedness which shall be deemed to have become Subordinated Indebtedness, as provided in § 2.7 hereof) and each holder of Subordinated Indebtedness hereby directs TWA to make, and TWA hereby agrees to make, prior payment in full of the Senior Indebtedness and to make payments to such holder on account of the Subordinated Indebtedness only after payment in full of the Senior Indebtedness.

§ 2.3. Upon any distribution of all or substantially all the assets of TWA or upon any dissolution, winding up or liquidation of TWA, whether voluntary or involuntary, or upon any reorganization, readjustment, arrangement or similar proceeding relating to TWA or any of its creditors as such or property, whether in bankruptcy, insolvency, receivership proceeding or otherwise, or upon any assignment by TWA for the benefit of creditors or upon any other marshalling of the assets or liabilities of TWA,

[fol. 4245] (a) all the Senior Indebtedness shall first be paid in full or provision made for such payment by deposit of the requisite cash in trust with the Trustee or duly appointed paying agents for the purpose before any payment is made on account of the principal of or interest on the Subordinated Indebtedness;

(b) any payment to which any holder of the Subordinated Indebtedness would be entitled except for the provisions of this Agreement shall be paid or delivered by the trustee, receiver, assignee for the benefit of creditors, or other liquidating agents making such payment, directly to the holders of the Senior Indebtedness (or to the Trustee), ratably in accordance with their respective interests, to the extent necessary to make payment in full of the Senior Indebtedness after giving effect to any concurrent payment or provision therefor as aforesaid to the holders of the Senior Indebtedness; and

(c) in the event that notwithstanding the foregoing, any payment shall be received by any holder of the Subordinated Indebtedness before all such Senior Indebtedness is paid in full, or provision is made as

aforesaid for its payment, such payment shall be held in trust for the benefit of, and shall be paid over or delivered in precisely the form received (except for the endorsement or assignment of such holder of Subordinated Indebtedness where necessary) to the holders of, the Senior Indebtedness (or to the Trustee), ratably in accordance with their respective interests, for application to or payment of all the Senior Indebtedness remaining unpaid to the extent necessary to make payment in full of the Senior Indebtedness after giving effect to any concurrent payment or provision therefor as aforesaid to the holders of the Senior Indebtedness. Each holder of Subordinated Indebtedness hereby irrevocably authorizes the Trustee, or any of its officers, to make any such endorsement or assignment in the case of his failure or omission to make the same.

Each holder of Subordinated Indebtedness hereby agrees that the holders of the Senior Indebtedness or the Trustee may sell or otherwise dispose of any reorganization securities, for such price or prices and on such terms of payment as such holders or the Trustee in their or its uncontrolled discretion shall determine, and that only the amount in cash realized through such sale or other disposition of such reorganization securities shall be taken into account for [fol. 4246] purposes of determining whether the Senior Indebtedness has been paid in full pursuant to the provisions of this Article Two.

§ 2.4. The Trustee is hereby irrevocably authorized and empowered, but shall have no obligation, to demand, sue for, collect and receive every payment required or permitted by the terms of this Agreement to be paid or delivered to the Trustee, and to give acquittance therefor, and to file claims and proofs of claim and to take such other steps or proceedings, including the right to vote the full amount of Subordinated Indebtedness in any proceeding referred to in § 2.3 hereof or at any meeting of the creditors of TWA (whether or not held in connection with any such proceeding) in the Trustee's own name or in the name of any holder of Subordinated Indebtedness, or otherwise, as the

Trustee may deem necessary or advisable. Each holder of Subordinated Indebtedness agrees to execute and deliver to the Trustee such powers of attorney, proofs of claim, assignments of claim or proofs of claim, or other instruments, as the Trustee may request in order to enable the Trustee to enforce any and all claims upon or with respect to the Subordinated Indebtedness and to collect and receive any and all payments which may be payable or deliverable at any time upon or with respect to the Subordinated Indebtedness.

§ 2.5. Neither the Trustee nor any holder of the Senior Indebtedness shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by the Trustee or such holder, and each waiver shall relate only to the instance therein specified and shall in no way impair the rights of the Trustee or of such holder of Senior Indebtedness and shall in no way affect the obligations or liabilities of Hughes or TWA in respect of any other instance. No delay on the part of the Trustee or of any holder of Senior Indebtedness in the exercise of any right hereunder, or the failure to exercise the same, shall operate as a waiver of such right. Each holder of Subordinated Indebtedness agrees that the Trustee and such holders of Senior Indebtedness, without notice to or the consent of [fol. 4247] such holder of Subordinated Indebtedness and without affecting to any extent any obligation or liability of such holder of Subordinated Indebtedness or any of the rights of the Trustee hereunder, (a) may accelerate the maturity of any or all of the Senior Indebtedness, in accordance with the respective terms thereof, (b) may exchange, sell, surrender, release, fail to resort to or realize upon, or otherwise deal with, any of the property mortgaged under the Note Indenture and any other property securing Senior Indebtedness, and (c) may enter into agreements amending the Note Indenture or other instruments creating or evidencing Senior Indebtedness, to the extent permitted by the respective terms thereof, provided that such agreements shall not impose any restrictions, in addition to those set forth in this Article Two, on the right of TWA to make, or the right of such holder of Subordinated

Indebtedness to receive, payments of the principal and interest on the Subordinated Indebtedness.

§ 2.6. No payment of principal shall be made on the Subordinated Indebtedness, except as permitted by § 4.30A of the Note Indenture, and no holder of the Subordinated Indebtedness shall be entitled to receive any such payment, unless and until all the Notes shall first be paid in full. No payment of interest shall be made on the Subordinated Indebtedness if the making of such payment would constitute a default in the performance or observance of any covenant or agreement of TWA contained in § 4.30B or § 4.30C of the Note Indenture, and no holder of the Subordinated Indebtedness shall be entitled to receive any such payment. In the event that notwithstanding the foregoing, any payment shall be received by any holder of the Subordinated Indebtedness in respect of the principal of or interest on the Subordinated Indebtedness, such payment shall be held in trust for the benefit of, and shall be paid over to, the holders of the Senior Indebtedness upon demand by the Trustee or any holder of any of the Senior Indebtedness. Nothing contained in this Article Two (i) shall affect the obligation of TWA to make, or prevent TWA from making, payments of principal of or interest on the Subordinated Indebtedness at any time, except during the pendency of any of the proceedings or upon the happening of any of the events referred to in § 2.3 hereof or under circumstances which would constitute a violation [fol. 4248] of any of the provisions of this § 2.6 or (ii) shall prevent the payment when due of the principal of or interest on the Subordinated Indebtedness after the payment in full of the Notes.

§ 2.7. In the event that (a) Hughes shall acquire, directly or indirectly, any of the Senior Indebtedness, or (b) Hughes shall acquire, directly or indirectly, any of the Guaranteed Obligations, either in performance or satisfaction of its obligations under its guaranty thereof, or otherwise, then, and in any such case, the Senior Indebtedness and the Guaranteed Obligations (to the extent that such Guaranteed Obligations would otherwise constitute Senior Indebtedness, as defined in this Agreement) thus acquired

by Hughes and any obligations issued in renewal, extension, refunding, amendment or modification of such Senior Indebtedness and Guaranteed Obligations shall be deemed, for all purposes of this Agreement, to have ceased to be Senior Indebtedness and to have become Subordinated Indebtedness, as such terms are defined in this Agreement, and shall retain such status of Subordinated Indebtedness until the payment in full of all the Senior Indebtedness, notwithstanding any subsequent sale, hypothecation, transfer or other disposition by Hughes of the Senior Indebtedness or Guaranteed Obligations thus acquired by Hughes or any obligations issued in renewal, extension, refunding, amendment or modification of such Senior Indebtedness or Guaranteed Obligations. Hughes agrees that, in the event it shall thus acquire any of the Senior Indebtedness or Guaranteed Obligations, it will, forthwith after such acquisition, present the same to the Trustee for endorsement thereon of an appropriate notation referring to the provisions of this Agreement.

§ 2.8. This Article Two defines solely the relative rights as between the holder or holders of the Subordinated Indebtedness and the holders of the Senior Indebtedness. Nothing in this Article Two shall be deemed to impair the obligations of TWA in respect of the Subordinated Indebtedness as between TWA and the holder or holders of the Subordinated Indebtedness. Each holder of Subordinated Indebtedness, whether or not a party hereto, shall by his acceptance of such Subordinated Indebtedness be deemed [fol. 4249] to have irrevocably agreed to be bound by all the provisions of this Article Two; and every instrument creating or evidencing Subordinated Indebtedness either (a) shall contain an appropriate notation referring to this Agreement and a statement to the effect that each holder of Subordinated Indebtedness by his acceptance thereof agrees to be bound by all the provisions of this Article Two, or (b) shall contain provisions substantially identical with those contained in § 2.2 to § 2.6, inclusive, of this Agreement, specifically subordinating such Subordinated Indebtedness to the Senior Indebtedness of the Company to at least the same extent as the Subordinated Debentures are

subordinated to the Notes by the provisions of this Article Two, and a statement to the effect that each holder of such Subordinated Indebtedness by his acceptance thereof agrees to be bound by all such subordination provisions.

ARTICLE THREE

Miscellaneous

§ 3.1. All requests, notices and other communications hereunder shall be in writing and shall be delivered or mailed addressed to each of the respective parties hereto at its address set forth below, unless such address shall have been changed by written notice to the other parties of such change, in which event it shall be addressed to such changed address:

If to Hughes:

Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

Attention: *Mr. Raymond M. Holliday,*
Vice-President—Finance.

If to TWA:

Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, N. Y.

Attention: *Senior Vice President—Finance*
and Treasurer.

[fol. 4250] If to the Bank Agent:

Irving Trust Company,
One Wall Street,
New York 15, N. Y.

Attention: *Mr. Robert A. Kerr,*
Vice-President.

If to Equitable:

The Equitable Life Assurance Society
of the United States,
261 Madison Avenue,
New York 16, N. Y.

Attention: *Securities Investment Department.*

If to Metropolitan:

Metropolitan Life Insurance Company,
One Madison Avenue,
New York 10, N. Y.

Attention: *Vice-President and Treasurer.*

If to the Trustee:

Chemical Bank New York Trust Company,
Corporate Trust Department,
30 Broad Street,
New York 15, N. Y.

Attention:

Any such request, notice or other communication shall be deemed sufficiently delivered or served if mailed by registered or certified mail, postage prepaid, addressed as hereinabove in this § 3.1 provided.

§ 3.2. This Agreement shall not be amended, modified or terminated except with the written consent of each of the parties hereto.

[fol. 4251] § 3.3. Hughes agrees that it will not consolidate with, merge into, or convey or transfer all or substantially all of its property as an entirety to, any person unless the successor formed by or resulting from such consolidation or merger or to which such conveyance or transfer is made shall execute and deliver to the other parties to this Agreement, simultaneously with such consolidation, merger, conveyance or transfer, a supplemental agreement to this Agreement wherein the due and punctual performance of the covenants and agreements herein which are to be performed or observed by Hughes shall be assumed by such successor corporation.

§ 3.4. In case any corporation shall become a successor to TWA or any such successor corporation, in accordance with Article Thirteen of the Note Indenture, the term "TWA" as used herein shall be deemed to mean and include such successor corporation.

§ 3.5. All covenants, conditions and provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including any successor holder of all or any part of the Notes at any time held by any of the Banks or Insurance Companies, and including also, in the case of Hughes (as defined in Article Two hereof), any subsequent holder of the Subordinated Indebtedness (as defined in Article Two hereof), and no other person shall have any legal or equitable right or remedy to enforce the provisions of this Agreement.

§ 3.6. This Agreement shall be governed by the laws of the State of New York.

§ 3.7. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

[fol. 4252] IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

HUGHES TOOL COMPANY,

By .....
Vice-President

Attest:

.....
Assistant Secretary

TRANS WORLD AIRLINES, INC.,

By .....
Senior Vice President—Finance and Treasurer.

Attest:

.....
Assistant Secretary

IRVING TRUST COMPANY, as Agent for the Banks named in the above-mentioned July 1960 Loan Agreement,

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4253]

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

By .....
Vice-President

Attest:

.....
Assistant Secretary

METROPOLITAN LIFE INSURANCE COMPANY,

By .....
Vice-President

Attest:

.....
Assistant Secretary

CHEMICAL BANK NEW YORK TRUST COMPANY, as Trustee, as aforesaid,

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4254]

Exhibit C

HUGHES TOOL COMPANY
GULF BUILDING
HOUSTON 2, TEXAS

July , 1960

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

FINAL ACCOUNTING AND
DEBENTURE PURCHASE AGREEMENT

Dear Sirs:

This will confirm the understanding between you (hereinafter called "TWA") and the undersigned (hereinafter called "Hughes") with respect to the matters set forth herein.

1. *Prior Transactions.*

a. Pursuant to a general plan for the financing by TWA of its acquisition of 15 Boeing Model 707-131 aircraft, 12 Boeing Model 707-331 aircraft, 20 Convair Model 880 aircraft and 1 Link Flight Simulator for Convair Model 880 aircraft, together with related spare parts and provisioning for the above including Pratt & Whitney and General Electric turbo-jet engines, Hughes and TWA have heretofore entered into various assignments and other agreements including the following:

Agreement dated April 1, 1960
Agreement dated April 14, 1960
Agreement dated May 9, 1960, as amended by agreements dated May 16, 1960, May 23, 1960 and June 30, 1960.

b. TWA is also indebted to Hughes in the amount of $5,811,000 as evidenced by a promissory note in that principal amount dated December 1, 1957, plus accrued interest to the date hereof of $.....

2. *Further Assignments.* The parties agree that TWA has given Hughes appropriate notice pursuant to paragraphs 5 and 7 of the above-mentioned agreement of May 9, 1960, as amended. Hughes agrees that it will on the date [fol. 4255] hereof transfer to TWA good title to the aircraft referred to in paragraph 4 of such agreement and the Spares (or Hughes' interest therein) referred to in paragraph 6 of such agreement and not previously transferred to TWA, in each case free and clear of all liens and encumbrances. Hughes also hereby assigns to TWA (a) all Hughes' rights to acquire from General Dynamics Corporation the 20 Convair Model 880 jet aircraft referred to in paragraph 3 of such agreement, (b) any and all Hughes' interests in the 880 Purchase Agreement referred to therein, not previously assigned to TWA, with respect to such Convair Model 880 jet aircraft, (c) any and all Hughes' interests in the 331 Purchase Agreement referred to therein, not previously assigned to TWA, with respect to the 12 Boeing Model 707-331 jet aircraft covered by the 331 Purchase Agreement and acquired or to be acquired by TWA from Hughes or the manufacturer thereof, and (d) any and all Hughes' interests in Purchase Agreement No. 7, dated March 2, 1956, as amended, between Boeing Airplane Company and Hughes covering the manufacture of 15 Boeing Model 707-131 jet aircraft, it being understood that Hughes does not warrant the aircraft or Spares described in this paragraph 2, expressly or by implication, and Hughes shall have no liability with respect thereto other than to use its best efforts to pass along to TWA from the respective manufacturers any warranties, patent indemnities and other rights accruing to Hughes under the purchase agreements covering such aircraft and Spares. Hughes agrees to execute and deliver any further documents and to do any further acts or things that may be reasonably required or appropriate to confirm in TWA the titles and interests so transferred and assigned.

[fol. 4256] 3. *Final Accounting.* By reason of (a) the transfers and assignments to TWA of the jet aircraft, spare engines, spare parts and other equipment and the interests in contracts to acquire such aircraft, spare engines, spare

parts and other equipment pursuant to the agreements referred to in paragraph 1 hereof (including TWA's obligation to issue subordinated obligations to Hughes with respect to jet aircraft and equipment acquired by TWA pursuant to such agreements prior to the date hereof, but not the interest applicable to such subordinated obligations), (b) the lease of certain of such jet aircraft by Hughes to TWA prior to their acquisitions by TWA, and (c) the promissory note dated December 1, 1957, TWA has become obligated to Hughes in the aggregate net amount of $..... . An itemization of such amount is set forth in the schedule attached hereto as Exhibit A.

4. *Settlement of Account.* Settlement of TWA's obligation to Hughes will be made as follows:

a. A cash payment in the amount of $..... delivered to, or for the account of, Hughes contemporaneously with this Agreement.

b. An Interim Subordinated Note or Notes in the amount of $100,000,000, dated the date of the First Closing Date (as defined in the Subordination Agreement), bearing interest at the rate of 6½% per annum, and delivered to Hughes contemporaneously herewith, in the form provided for in § 1.1 of the Agreement among TWA, Hughes, Irving Trust Company, as Bank Agent, The Equitable Life Assurance Society of the United States, Metropolitan Life Insurance Company and Chemical Bank New York Trust Company, as Trustee, dated July , 1960 (herein referred to as the "Subordination Agreement"), and otherwise as provided in the Subordination Agreement.

[fol. 4257] c. Payment in cash of the interest accrued on the subordinated obligations referred to in paragraph 3(a) hereof, from the date TWA was obligated to issue such obligations (subject only to the conditions specified in the agreements relating thereto) to the First Closing Date (as defined in the Subordination Agreement) will be made by TWA to Hughes upon the refunding of the Interim Subordinated Notes as provided in paragraph 1.4 of the Subordination Agreement.

5. *Registration and Public Offering of Subordinated Debentures.*

TWA agrees that it will proceed as soon as practicable, and in any event not later than December 31, 1960, (subject to the effectiveness of a registration statement therefor under the Securities Act of 1933), to make an offer (hereinafter called the "Subscription Offer") to the holders of its Common Stock, pursuant to which it will grant to such stockholders the right to subscribe, ratably in proportion to the number of shares of Common Stock held by them on the record date fixed by TWA for the determination of stockholders entitled to receive the Subscription Offer, for an aggregate of not less than $100,000,000 and not more than approximately $112,000,000 principal amount of subordinated debentures, upon such terms and with such detachable warrant rights for the acquisition of Common Stock as (a) will be permitted under the terms of the Subordination Agreement, the Note Indenture referred to therein and the related financing agreements to which TWA is a party, (b) will be designed (subject to the other requirements hereof) to make the debentures readily marketable at an offering price payable in cash (except as otherwise provided in the Subordination Agreement) of not less than 100% of the principal amount thereof and (c) will not result in an unreasonable dilution, or unreasonable potential dilution, of presently outstanding stock. Unless mutually [fol. 4258] agreed otherwise the terms of the debentures and of any stock warrants attached thereto will conform to the recommendations of a special committee appointed for that purpose by and from TWA's investment banking firms; provided, however, that unless mutually agreed otherwise

(1) the offering price of the debentures will not exceed 105% of their principal amount;

(2) the debentures shall bear interest at the rate of 6½% per annum, payable only if earned, but cumulative, as provided in the Subordination Agreement, and shall otherwise be subject to the provisions of the Subordination Agreement;

(3) the ratio of warrant rights to principal amount of debentures will not exceed four for each $100;

(4) the warrants shall be detachable and exercisable not later than 6 months after the date of offering and until approximately the first sinking fund date for the debentures;

(5) the warrants shall be exercisable at a purchase price for each share of common stock of not in excess of 120% of the closing market price of the common stock of TWA on the day preceding the Subscription Offer and shall be exercisable by payment of cash, or surrender of a principal amount of debentures, equal to such purchase price, or a combination thereof;

(6) the subordination provisions and other limitations on the payment of principal and interest on the debentures will not be more onerous on the debenture holders, or extend for a longer period, than is required by the Subordination Agreement and Note Indenture, except that

a. a provision may be included prohibiting the payment of principal or interest on the debentures if TWA's Net Working Capital would as a result be less than $15,000,000.

b. retirements (other than out of fixed sinking fund payments) of debentures out of funds otherwise available for dividends may be discretionary in TWA's Board of Directors.

c. the maturity of the debentures may be as late as December 31, 1977, provided that annual sinking fund payments sufficient to redeem by December 31, 1977 at least 50% of the principal amount of the debentures outstanding on December 31, 1972 commence in 1973.

d. TWA will not amend the Note Indenture, or the Notes issued thereunder, or enter into new agree-
[fol. 4259] ments for Senior Indebtedness as defined in the Note Indenture, if such amendments or agree-

ments would impose any restrictions (other than those contained in the Note Indenture for the exclusive benefit of the holders of Notes to be issued thereunder, at the time it is executed) on the right of TWA to make, or the right of the debenture holder to receive, payments of principal and interest.

6. *Listing of Rights.* As soon as it is technically feasible so to do, TWA will apply to the New York Stock Exchange for the listing of the rights to purchase the subordinated debentures with warrants attached, and separately the subordinated debentures and will apply to the American Stock Exchange for the listing of the warrants to purchase Common Stock.

7. *Interest on Interim Subordinated Obligations.* It is agreed that any Interim Subordinated Obligations, as defined in § 1.6 of the Subordination Agreement, that may be issued by TWA pursuant to such agreement shall bear interest at the rate of 6½% per annum.

8. *Legal Expenses.* TWA will pay the reasonable charges and disbursements of Andrews, Kurth, Campbell & Jones for any services rendered in connection with the subject matter of this Agreement and will reimburse Hughes for any out-of-pocket expenses in connection with the transactions contemplated thereby.

9. *Approvals and Consents.* TWA warrants that it has received from the Civil Aeronautics Board an order dated June 23, 1960 approving its motion filed on May 6, 1960 for approval of transactions with Hughes relating to the acquisition of jet equipment and the financing as set forth therein. TWA will use its best efforts to secure any additional exemptions or consents which may be or become necessary in connection with the consummation of this Agreement, and to the extent that approval from the Civil Aero- [fol. 4260] nautics Board is necessary, this Agreement is hereby made expressly subject thereto. Pending the issuance of any order by the Civil Aeronautics Board that may be required with respect to the transactions contemplated hereby no sums shall be payable by TWA to Hughes

with respect to the 2 additional Boeing Model 707-331 jet aircraft and the spare engines therefor added to the agreement of May 9, 1960 by the agreement of June 30, 1960 referred to in paragraph 1 hereof. This agreement will not become effective until any necessary consents have been obtained from the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

HUGHES TOOL COMPANY

By

Accepted as of the day of July, 1960

TRANS WORLD AIRLINES, INC.

By

[fol. 4261]

Exhibit D

AGREEMENT

AMONG

HUGHES TOOL COMPANY

AND

TRANS WORLD AIRLINES, INC.

AND

IRVING TRUST COMPANY, as Notes Agent

1960 THREE-PARTY AGREEMENT

Dated July , 1960

[fol. 4262] AGREEMENT dated July , 1960, among HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "*Hughes*"), party of the first part, TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called "*TWA*"), party of the second part, and IRVING TRUST COMPANY, a New York trust company (hereinafter called the "*Notes Agent*"), party of the third part.

WITNESSETH:

WHEREAS Hughes is the owner of not less than 5,221,301 shares of Common Stock, par value $5 per share, of TWA, comprising approximately 78% of the outstanding 6,674,155 shares of Common Stock of TWA; and

WHEREAS TWA has executed and delivered to Chemical Bank New York Trust Company, as Trustee (hereinafter called the "*Trustee*"), an Indenture of Mortgage dated as of July 1, 1960 (hereinafter called the "*Note Indenture*"),

which provides for (a) the delivery thereunder of $74,000,000 principal amount of 6% Equipment Mortgage Serial Notes of TWA, maturing serially on June 30, 1961, and quarterly thereafter through June 30, 1964 (hereinafter called *"Serial Notes"*), and (b) the issuance thereunder of $94,800,000 principal amount of 6½% Equipment Mortgage Sinking Fund Notes of TWA, due June 30, 1972 (hereinafter called *"Sinking Fund Notes"*), all said Serial Notes and Sinking Fund Notes being hereinafter collectively called the *"Notes"* (which term, as used herein, shall also mean the Serial Notes or the Sinking Fund Notes, as the context or circumstances may require); and

WHEREAS TWA has entered into an agreement dated as of July , 1960 (hereinafter called the *"July 1960 Loan Agreement"*), with Irving Trust Company and the other Banks named therein (hereinafter collectively called the *"Banks"*), pursuant to which the Banks have agreed to lend an aggregate of $74,000,000 to TWA, such loans to be evidenced by an equal aggregate principal amount of Serial Notes; and

[fol. 4263] WHEREAS TWA has entered into agreements dated July , 1960 (hereinafter called the *"Note Purchase Agreements"*), with The Equitable Life Assurance Society of the United States and Metropolitan Life Insurance Company (hereinafter together called the *"Insurance Companies"*), pursuant to which the Insurance Companies have agreed to purchase from TWA an aggregate of $94,800,000 principal amount of Sinking Fund Notes; and

WHEREAS it is a condition precedent to the obligation of the Banks to advance any monies to TWA pursuant to the July 1960 Loan Agreement, and it is a condition precedent to the obligations of the Insurance Companies to purchase any Sinking Fund Notes from TWA pursuant to the Note Purchase Agreements, that this Agreement shall have been duly executed and delivered by the parties hereto; and

WHEREAS the Notes Agent has been duly authorized by the Banks and the Insurance Companies to enter into this Agreement; and

WHEREAS, for the purposes of this Agreement, (a) the term *"a majority of the Noteholders"* shall mean the holders of more than 50% in principal amount of all the Notes at the time outstanding (excluding any Notes held by Hughes or by any Hughes Affiliate), (b) the term *"TWA Stock"* shall mean the Common Stock of TWA, as the same shall be constituted from time to time, and shall also mean and include, in the event TWA shall merge into or be consolidated with another corporation, or shall sell all or any substantial portion of its assets to another corporation in exchange for voting securities of such other corporation, all voting securities of such other corporation which shall be issued or become issuable in respect of the Common Stock of TWA in connection with or as a result of any such merger, consolidation or sale of assets, and (c) the term *"Hughes Affiliate"* shall mean any person, firm or corporation (except TWA and its subsidiaries) controlling, controlled by or under common control with Hughes Tool Company.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree with each other as hereinbelow set forth:

[fol. 4264] § 1. In the event that

(a) default shall be made in the performance or observance of any covenant, agreement or condition contained in § 4.16, § 4.18, § 4.21, § 4.22, § 4.24, § 4.26, § 4.30, § 4.31, § 4.32, § 9.1 or § 10.1 of the Note Indenture; or default shall be made in the performance or observance of any covenant, agreement or condition contained in § 4.15 of the Note Indenture and such default shall not be remedied within a period of 30 days after the happening of such default; or any of the Events of Default described in § 11.1H or § 11.1I of the Note Indenture shall have happened; or

(b) TWA shall at any time be in default in the payment of interest on any of the Notes and such default shall not be remedied within a period of 10 days, or TWA shall at any time be in default in the payment

of the principal of or premium on any of the Notes when and as the same shall become due and payable, whether at maturity, by declaration, by call for redemption or otherwise;

then, and in any such event, Hughes hereby agrees that it will, within 10 days after the service on it of a request therefor by the Notes Agent, cause to be subjected to a Voting Trust Agreement in the form attached hereto as Schedule A (hereinafter called the *"Voting Trust Agreement"*), all shares of TWA Stock owned by Hughes at the date hereof and all shares of TWA Stock hereafter acquired by Hughes or by any Hughes Affiliate in any manner (including, without limitation, any acquisition through the exercise of conversion rights contained in any convertible securities of TWA or through the exercise of Warrants or rights to subscribe to TWA Stock or otherwise) prior to the execution and delivery of the Voting Trust Agreement (except any such shares theretofore sold by Hughes or by any Hughes Affiliate on any national securities exchange or in connection with a bona fide public offering with respect to which a registration statement became effective under the Securities Act of 1933, as amended, and not thereafter acquired or reacquired by Hughes or by any Hughes Affiliate). TWA and Hughes hereby agree that they will take all action requisite on their part to cause the Voting Trust Agreement to be executed and delivered by TWA and Hughes, respectively, [fol. 4265] and by the Voting Trustee to be nominated by Hughes as hereinafter provided. The Voting Trustees under the Voting Trust Agreement shall consist of three persons, two to be nominated by the Notes Agent and one to be nominated by Hughes, *provided, however*, that in the event that Hughes shall fail to designate such nominee within the aforesaid period of 10 days after the service on it of such request by the Notes Agent, or in the event such nominee shall fail to execute the Voting Trust Agreement within said 10 day period, the third Voting Trustee shall be a person designated by the two Voting Trustees nominated by the Notes Agent. Any such request by the

Notes Agent shall be in writing, shall specify the names of the two Voting Trustees nominated by the Notes Agent, and shall contain a certification that the Notes Agent has been authorized to serve such request and to designate such two Voting Trustees by a majority of the Noteholders, and, concurrently with the service of such request upon Hughes, a copy thereof shall be served upon TWA. In order to subject said shares of TWA Stock to the Voting Trust Agreement, Hughes will transfer and assign or cause to be transferred and assigned said shares to said Voting Trustees and will deposit or cause to be deposited with the Agent of the Voting Trustees named in the Voting Trust Agreement the certificates for said shares, all of which certificates, if not registered in the names of the Voting Trustees, shall be duly endorsed in blank for transfer or accompanied by proper instruments of assignment and transfer thereof duly executed in blank, in either case with signatures guaranteed and with all requisite stock transfer tax stamps thereto affixed. Hughes further agrees that if, at any time or from time to time after the execution and delivery of the Voting Trust Agreement, Hughes or any Hughes Affiliate shall acquire additional shares of TWA Stock in any manner (including, without limitation, any acquisition through the exercise of the conversion rights contained in any convertible securities of TWA or through the exercise of warrants or rights to subscribe to TWA Stock or otherwise), it will forthwith upon the acquisition of any such additional shares cause the same to be subjected to the Voting Trust Agreement in the same manner as hereinabove set forth with respect to the shares of TWA [fol. 4266] Stock owned by Hughes at the time of the execution and delivery of the Voting Trust Agreement. The Voting Trust Agreement shall be dated on or as of such date, not earlier than the date of the aforesaid request therefor by the Notes Agent and not later than the date of execution thereof, as the Notes Agent shall determine, and shall be expressed to terminate on June 30, 1980, or ten years after the date of the Voting Trust Agreement, whichever shall be earlier. TWA and Hughes agree that, in the event that the Voting Trust Agreement would ter-

minate ten years after the date thereof, as contemplated by the foregoing sentence and by clause (a) of Article Thirteen of the form of Voting Trust Agreement attached hereto as Schedule A, they will, at the written request of the Notes Agent, take all action requisite on their part to extend the duration of the Voting Trust Agreement for such additional period (not exceeding, however, the maximum period then permitted by the laws of the State of Delaware) as shall be specified in such request of the Notes Agent.

§ 2. Hughes agrees that as regards such shares of TWA Stock owned by it at the date hereof as are presently pledged, it will concurrently with the execution hereof obtain (a) the consent of such pledgee to the execution and delivery of this Agreement by Hughes and to the performance by Hughes of its undertakings and agreements hereunder, and (b) the agreement of such pledgee to conform to the requirements of the next succeeding sentence of this § 2, with respect to the TWA Stock pledged with such pledgee, subject, however, to the proviso contained in the second next succeeding sentence of this § 2. Hughes further agrees that in the event that it or any Hughes Affiliate shall, subsequent to the date hereof and prior to the execution and delivery of the Voting Trust Agreement, pledge or otherwise transfer, by sale or in any other manner, any shares of TWA Stock at any time owned by Hughes or by such Hughes Affiliate (except any shares sold by Hughes or by such Hughes Affiliate on any national securities exchange or in connection with a bona fide public offering with respect to which a registration statement became effective under the Securities Act of 1933, as amended, and not thereafter acquired or reacquired by [fol. 4267] Hughes or by any Hughes Affiliate), such pledge or transfer shall be made expressly subject to the requirements that the pledgee or transferee of said shares of TWA Stock will effectively provide for the subjection of said shares of TWA Stock to the Voting Trust Agreement and for the extension of the duration of the Voting Trust Agreement in the same manner and to the same extent as Hughes would be required to do if Hughes had continued

in possession of the certificates representing said shares of TWA Stock, and that any such pledgee shall consent to the Proxy granted by § *3* hereof (and shall grant to the Notes Agent a proxy similar to the Proxy granted by § *3* hereof, if the TWA Stock pledged with such pledgee shall be transferred into the name of such pledgee or its nominee) and that any such transferee shall grant to the Notes Agent a proxy similar to the Proxy granted by § *3* hereof with respect to said shares of TWA Stock transferred to such transferee. The provisions of this § *2* shall be applicable to all subsequent pledges or transfers of said shares of TWA Stock in the same manner and to the same extent as if such pledges or transfers were pledges or transfers of TWA Stock then held by Hughes, *provided, however,* that notwithstanding the provisions of this § *2*, any pledgee of any of said shares of TWA Stock and any transferee of any of said shares of TWA Stock may sell any of said shares on any national securities exchange or in any other bona fide distribution or public offering (whether or not the same be a public offering with respect to which a registration statement became effective under the Securities Act of 1933, as amended) and the shares so sold shall thereupon be released from the provisions of this § *2* unless and until said shares are acquired or reacquired by Hughes or by any Hughes affiliate. Hughes further agrees that concurrently with the execution and delivery hereof Hughes will cause to be inscribed upon the certificates for all shares of TWA Stock now owned by it, and forthwith upon the acquisition by Hughes or by any Hughes Affiliate of any additional shares of such stock will cause to be inscribed upon the certificates therefor, immediately following the name of the registered owner, substantially the following words:

> "Subject to Three-Party Agreement dated July , 1960, copy of which is on file at office of Transfer Agent."

[fol. 4268] TWA agrees that concurrently with the execution and delivery hereof and from time to time thereafter

it will furnish to the Transfer Agent and the Registrar for the TWA Stock such resolutions, instructions and other authorizations as may be requisite to cause said words to be so inscribed on all certificates for shares of TWA Stock which are subject to the agreements of Hughes contained in this Agreement.

§ 3. It is understood that the Proxy hereinbelow granted by this § *3* and the provisions of this § *3* relating thereto are to be deemed to constitute distinct and separable provisions from the other provisions of this Agreement and that said Proxy is being granted by Hughes because Hughes believes that, in the event of the happening of one of the conditions hereinbelow specified upon which the effectiveness of said Proxy depends, it will be for the best interests of TWA and its stockholders to vest in the Notes Agent the power to vote and act with respect to all the shares of TWA Stock with respect to which Hughes shall be entitled to vote and act, so long as the Notes Agent is willing to exercise such power, pending the subjection of such shares to the Voting Trust Agreement in accordance with the provisions of § 2 hereof.

In the event that

(a) default shall be made in the performance or observance of any covenant, agreement or condition contained in § 4.16, § 4.18, § 4.21, § 4.22, § 4.24, § 4.26, § 4.30, § 4.31, § 4.32, § 9.1 or §10.1 of the Note Indenture; or default shall be made in the performance or observance of any covenant, agreement or condition contained in § 4.15 of the Note Indenture and such default shall not be remedied within a period of 30 days after the happening of such default; or any of the Events of Default described in § 11.1H or § 11.1I of the Note Indenture shall have happened; or

(b) TWA shall at any time be in default in the payment of interest on any of the Notes and such default shall not be remedied within a period of 10 days, or TWA shall at any time be in default in the payment of the principal of or premium on any of the Notes

when and as the same shall become due and payable, whether at maturity, by declaration, by call for redemption or otherwise;

[fol. 4269] then, and in any such event, Hughes hereby constitutes and appoints the Notes Agent its true and lawful attorney, agent and proxy, with full power of substitution, for and in its name, place and stead to vote and act, with respect to all of the shares of TWA Stock with respect to which Hughes shall be entitled to vote and act, at any meeting of Stockholders of TWA, whether regular or special, and at any and all adjournments thereof, with all the powers Hughes would possess if then and there personally present, and Hughes hereby revokes any and all proxies heretofore given to any person or persons other than the Notes Agent to vote or act with respect to such shares of TWA Stock and hereby ratifies and confirms all that its said attorney, agent and proxy or any substitute acting therefor may lawfully do by virtue hereof. Hughes covenants that it will not revoke the aforesaid Proxy in any manner whatsoever prior to the effective date of the Voting Trust Agreement. The Proxy hereby granted shall be deemed to become effective and to be dated as of the earliest date on which any of the conditions specified in clause (a) or (b) of this § *3* shall occur, and, so long as none of such conditions has occurred, shall not affect or be affected by the grant of other proxies dated after the date of this Agreement, but in the event that any one of said conditions shall occur subsequent to the date of any such other proxy, then such other proxy shall be deemed to be revoked by this Proxy and to be void and of no effect except with respect to any action taken pursuant to such other proxy prior to the occurrence of any one of said conditions. The term of the Proxy hereby granted shall not be deemed limited to three years from its effective date but shall be deemed to extend until said TWA Stock has been subjected to the Voting Trust Agreement, or until the date when the Notes shall cease to be outstanding, whichever is the earlier, but in no event beyond June 30, 1980.

§ 4. In case the Notes Agent shall resign or shall be removed by the holders of the Notes, any successor Notes Agent appointed by a majority of the Noteholders shall succeed to all the rights and powers of the Notes Agent under this Agreement. Any corporation into which any Notes Agent may be merged or with which it may be con- [fol. 4270] solidated or any corporation resulting from any merger or consolidation to which any Notes Agent shall be a party or any corporation to which substantially all the business and assets of the Notes Agent may be transferred shall be the Notes Agent under this Agreement, without further act on the part of the holders of the Notes.

§ 5. Hughes agrees to pay the reasonable compensation of the Notes Agent for its services under this Agreement and (if and when the same shall be executed) the Voting Trust Agreement, including any services rendered by the Notes Agent to the Banks and Insurance Companies, or any of them, in connection with the transactions contemplated by this Agreement, and to reimburse the Notes Agent for any out-of-pocket expenses incurred in connection therewith, including the fees and disbursements of any counsel which the Notes Agent may retain in connection with or incident to any of the transactions contemplated by this Agreement.

§ 6. TWA agrees to pay all expenses in connection with the preparation and execution of this Agreement and (if and when the same shall be executed) the Voting Trust Agreement (other than the compensation and expenses of the Notes Agent), including, without limitation, all printing expenses and all stamp and other taxes which may be or become payable as the result of the transactions contemplated by this Agreement.

§ 7. All requests, notices and other communications, hereunder shall be in writing and shall be addressed to each of the respective parties hereto at its address set forth below, unless such address shall have been changed by written notice to the other parties of such change, in which event it shall be addressed to such changed address:

If to Hughes:

Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

Attention: *Mr. Raymond M. Holliday,*
Vice-President—Finance.

[fol. 4271]

If to TWA:

Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, N. Y.

Attention: *Senior Vice President—Finance*
and Treasurer.

If to the Notes Agent:

Irving Trust Company,
One Wall Street,
New York 15, N. Y.

Attention: *Mr. Robert A. Kerr,*
Vice President.

Any such request, notice or other communication shall be deemed sufficiently served if mailed by registered or certified mail, postage prepaid, addressed as hereinabove in this § 7 provided.

§ 8. This Agreement shall terminate on the earliest of the following dates, namely: (a) June 30, 1980, (b) the date on which the Notes shall cease to be outstanding, or (c) the date on which the Voting Trust Agreement (if and when the same shall be executed) shall be terminated in accordance with its terms.

§ 9. This Agreement shall not be terminated except as provided in § 8 hereof, nor shall this Agreement be amended or modified in any respect except by an instrument or concurrent instruments in writing signed by each of the parties hereto.

§ 10. Hughes agrees that it will not consolidate with, merge into, or convey or transfer all or substantially all of its property as an entirety to, any person unless the successor formed by or resulting from such consolidation or merger or to which such conveyance or transfer is made shall execute and deliver to TWA and the Notes Agent, simultaneously with such consolidation, merger, conveyance or transfer, a supplemental agreement to this Agreement wherein the due and punctual performance of the covenants and agreements herein which are to be performed [fol. 4272] or observed by Hughes shall be assumed by such successor corporation.

§ 11. In case any corporation shall become a successor to TWA or any such successor corporation, in accordance with Article Thirteen of the Note Indenture, the term *"TWA"* as used herein shall be deemed to mean and include such successor corporation.

§ 12. All covenants, conditions and provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns (including any successor holder of all or any part of the Notes at any time held by any of the Banks or Insurance Companies to whom the original holder of such Notes shall assign its rights hereunder with respect to all or any part of such Notes), and no other person (except the holders from time to time of the Notes for whom the Notes Agent is acting hereunder) shall have any legal or equitable right or remedy to enforce the provisions of this Agreement.

§ 13. This Agreement shall be governed by the laws of the State of New York.

§ 14. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

HUGHES TOOL COMPANY

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4273]

TRANS WORLD AIRLINES, INC.

By .....
Senior Vice President

Attest:

.....
Assistant Secretary

IRVING TRUST COMPANY, as the Notes Agent under the foregoing Agreement,

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4274]

Schedule A

VOTING TRUST AGREEMENT

Common Stock

TRANS WORLD AIRLINES, INC.

Dated , 19 .

.....

.....

.....

Voting Trustees

FARMERS BANK OF THE STATE OF DELAWARE, AGENT

[fol. 4275] AGREEMENT dated , 19 , among TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called the *"Corporation"*), party of the first part, and , and , the survivors or survivor of them and their respective successors appointed as in this Agreement provided, as Voting Trustees (hereinafter called the *"Voting Trustees"*), parties of the second part, and HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called *"Hughes Tool"*), party of the third part.

WITNESSETH:

WHEREAS, the Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware with an authorized capital stock consisting of [shares of stock, par value $ per share, of which shares are issued and outstanding], and shares of Common Stock, par value $ per share (hereinafter called *"TWA Stock"*), of which shares are issued and outstanding; and

WHEREAS, the Corporation has executed and delivered to Chemical Bank New York Trust Company, as Trustee, an Indenture of Mortgage date as of July 1, 1960 (hereinafter called the *"Note Indenture"*), under which there are presently outstanding (a) $ principal amount of 6% Equipment Mortgage Serial Notes of the Corporation, maturing serially on June 30, 1961, and quarterly thereafter through June 30, 1964 (hereinafter called *"Serial Notes"*), and (b) $ principal amount of 6½% Equipment Mortgage Sinking Fund Notes of the Corporation, due June 30, 1972 (hereinafter called *"Sinking Fund Notes"*); all said Serial Notes and Sinking Fund Notes being hereinafter collectively called the *"Notes"*; and

WHEREAS, under and by virtue of the provisions of a certain agreement dated July , 1960, between Hughes Tool, the Corporation and Irving Trust Company, as agent for the holders of the Notes (hereinafter called the *"Notes* [fol. 4276] *Agent"*, which term, as used herein, shall include any successor to such Notes Agent), Hughes Tool and the Corporation are obligated to join in the execution and delivery of this Agreement and Hughes Tool is obligated to deposit or cause to be deposited hereunder certificates for shares of TWA Stock, being all shares of said TWA Stock owned by Hughes Tool on, or acquired by Hughes Tool or by any person, firm or corporation (except the Corporation and its subsidiaries) controlling, controlled by or under common control with Hughes Tool (any such person, firm or corporation being hereinafter called a *"Hughes Affiliate"*) at any time after July , 1960 [except shares of said TWA Stock sold by Hughes Tool or by a Hughes Affiliate on a national securities exchange or in connection with a bona fide public offering with respect to which a registration statement became effective under the Securities Act of 1933, as amended, and not thereafter acquired or reacquired by Hughes Tool or by any Hughes Affiliate];

NOW, THEREFORE, a voting trust in respect of the TWA Stock is hereby created and established subject to the following terms and conditions, to all and every one of which the parties hereto expressly assent and agree:

FIRST: Hughes Tool agrees that concurrently with the execution and delivery of this Agreement it will transfer and assign, or cause to be transferred and assigned, to the Voting Trustees shares of TWA Stock and will deposit or cause to be deposited hereunder with the hereinbelow mentioned Agent (hereinafter called the "*Agent*") of the Voting Trustees the certificates for such shares, all of which certificates, if not registered in the name of the Voting Trustees, shall be duly endorsed in blank for transfer or accompanied by proper instruments of assignment and transfer thereof duly executed in blank, in either case with signatures guaranteed and with all requisite stock transfer tax stamps thereto affixed.

SECOND: Hughes Tool agrees that if it or any Hughes Affiliate shall hereafter acquire in any manner (including, without limitation, any acquisition through the exercise of [fol. 4277] the conversion rights contained in any convertible securities of TWA or through the exercise of warrants or rights to subscribe to TWA Stock or otherwise) any shares of TWA Stock, in addition to those hereinabove mentioned, it will transfer and assign, or cause to be transferred and assigned, to the Voting Trustees such additional shares and will deposit or cause to be deposited hereunder with the Agent the certificates for such additional shares, which certificates, if not registered in the name of the Voting Trustees, shall be duly endorsed in blank for transfer or accompanied by proper instruments of assignment and transfer thereof duly executed in blank, in either case with signatures guaranteed and with all requisite stock transfer tax stamps thereto affixed.

THIRD: The Voting Trustees shall from time to time issue in respect to the TWA Stock so deposited hereunder with the Agent a Voting Trust Certificate or Voting Trust Certificates for a like number of shares of such TWA Stock, in substantially the following form and registered in the name of Hughes Tool or in such name as shall be specified in writing by Hughes Tool:

No. .... Shares

TRANS WORLD AIRLINES, INC.

Voting Trust Certificate For Common Stock

THIS IS TO CERTIFY THAT

will, upon the termination of the Voting Trust Agreement hereinafter mentioned and subject to the provisions thereof, upon surrender hereof and upon payment of any stamp tax or other charge in connection with the delivery, be entitled to receive a certificate or certificates, expressed to be fully paid, for shares of Common Stock, par value $ per share, of Trans World Airlines, Inc., a Delaware corporation (hereinafter called "the Corporation"), heretofore deposited under said Agreement, and is in the meantime entitled to receive payments equal to the cash dividends, if any, collected by or for the account of the Voting Trustees hereinafter named, or their successors, upon a like number of shares, and [fol. 4278] to receive Voting Trust Certificates (or scrip therefor) in respect of any dividends payable in Common Stock of the Corporation so collected.

This certificate is issued under and the rights represented hereby are subject to, and each successive holder hereof by accepting the same consents and agrees to be bound by, all the terms and conditions of a certain Voting Trust Agreement dated ....., 19..... (hereinafter called the "Voting Trust Agreement"), by and between the Corporation, party of the first part, , and , the survivors or survivor of them and their respective successors appointed as in the Voting Trust Agreement provided, as Voting Trustees, parties of the second part, and Hughes Tool Company, a Delaware corporation, holder of certain shares of Common Stock of the Corporation, party of the third part. An original counterpart of the Voting Trust Agreement is on file at the principal office of the Corporation in the State of Delaware, and is open to the inspection of any holder of stock of the Corporation or of any Voting Trust Certificate daily during business hours.

No voting right passes by or under this certificate or by or under any agreement expressed or implied, it being expressly understood and agreed that, until the actual delivery of a stock certificate or certificates, to the registered owner hereof or his assigns, the Voting Trustees at any time acting under the Voting Trust Agreement shall possess and be entitled in their discretion to exercise in respect of any and all shares of stock called for by this certificate, all rights and powers of every name and nature, including the right to vote thereon and to take or omit to take any other action in respect thereof.

The Voting Trust Agreement will remain in effect until [**] , unless previously terminated [or unless the duration of the Voting Trust Agreement is extended] as provided therein.

No stock certificate shall be deliverable in respect hereof until [**] or until such earlier [or later] termination of the Voting Trust Agreement and such delivery shall in any event be subject to the provisions of the Voting Trust Agreement.

[fol. 4279] This certificate is transferable only on the books of the Voting Trustees at the office of their Agent in the City of Dover, Delaware, by the registered owner in person or by attorney duly authorized and upon surrender hereof properly endorsed and payment of any taxes imposed by law on such transfer, and otherwise as provided in the Voting Trust Agreement. Title to this certificate, when duly endorsed, shall to the extent permitted by law be transferable with the same effect as in the case of a negotiable instrument. The Voting Trustees and their Agent may nevertheless deem and treat the registered holder hereof (or, when presented duly endorsed in blank, the bearer hereof) as the absolute owner hereof for all purposes whatsoever, and neither the Voting Trustees nor their Agent shall be affected by any notice to the contrary.

This certificate is not valid for any purpose until signed by the Agent of the Voting Trustees.

** Here insert June 30, 1980, or 10 years after the date of the Agreement, whichever shall be earlier.

IN WITNESS WHEREOF, the Voting Trustees have caused this certificate to be signed by their duly authorized Agent.

Dated

.....

.....

.....

Voting Trustees.

By FARMERS BANK OF THE STATE OF DELAWARE,

Agent

By .....

Such certificates shall have a form of assignment on the back thereof in substantially the following form:

> FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto the with-[fol. 4280] in certificate and all right, title and interest represented thereby, and irrevocably constitutes and appoints attorney to transfer the same on the books of the Voting Trustees with full power of substitution in the premises.

The Voting Trustees may make such changes in the form of such certificates and may add or append such legends or endorsements thereon as may be required by the rules of any stock exchange on which application may be made to list such certificates or to conform to any usage.

FOURTH: As hereinafter in Article Eighth contemplated, the Voting Trustees may also issue scrip (hereinafter included within the term "Voting Trust Certificates", unless otherwise indicated and specifically referred to as "scrip") representing fractional interests in respect of Voting Trust Certificates, which scrip shall be in bearer form and transferable by delivery and unless otherwise expressly stated shall have only the rights (1) of exchange for full Voting Trust Certificates and (2) to participate, upon the termination of this Agreement, proportionately in the stock or

avails thereof held for the benefit of such scrip. Such scrip shall be of such tenor and form, not inconsistent with the provisions hereof, as the Voting Trustees may approve.

FIFTH: The Voting Trust Certificates shall be printed and shall be signed in the name of the Voting Trustees by their Agent appointed for the purpose, and shall be transferable only on the books of the Voting Trustees at the office of their Agent in the City of Dover, Delaware, as provided in the Voting Trust Certificates and in accordance with the rules from time to time established for that purpose by the Voting Trustees.

The transfer books may be closed by the Voting Trustees for a reasonable time prior to the payment or distribution of any dividend, as well as at any other time or for any other purpose when deemed by the Voting Trustees to be desirable. In lieu of the closing of the books against transfers of Voting Trust Certificates as aforesaid, the Voting Trustees may, if they deem it advisable, fix a date as a record [fol. 4281] date for the determination of the Voting Trust Certificate holders entitled to receive such dividends; and the owners of Voting Trust Certificates of record on such date shall exclusively be entitled to participate in the distribution of such dividends.

SIXTH: In case any Voting Trust Certificate shall become mutilated or become lost, destroyed or stolen, the Voting Trustees may, in their uncontrolled discretion, issue and deliver in exchange therefor and upon cancellation of the mutilated Voting Trust Certificate, or in lieu of the lost, destroyed or stolen Voting Trust Certificate, a new Voting Trust Certificate representing the same number of shares of stock, upon the production of evidence of such loss, destruction or theft, satisfactory to the Voting Trustees, and upon receipt of indemnity satisfactory to them, and upon compliance also with such other reasonable regulations as they may prescribe.

SEVENTH: The certificates for TWA Stock deposited with the Agent of the Voting Trustees shall, if not registered in the name of the Voting Trustees, be surrendered and cancelled and new certificates therefor issued to the Voting Trustees. In all certificates issued in the name of the Vot-

ing Trustees it shall appear that they are issued pursuant to this Agreement, and in the entry of such ownership in the books of the Corporation that fact shall also be noted.

Such TWA Stock shall be held, used and applied by the Voting Trustees and their successors in office for the purposes of and in accordance with this Agreement.

The Voting Trustees may cause any TWA Stock at any time held by them under this Agreement to be transferred to any name or names other than the name of the Voting Trustees herein named, if such transfer becomes necessary by reason of any change in the persons holding the office of Voting Trustees as hereinafter provided or by reason of any statutory requirement relative to directors' qualifying shares.

EIGHTH: Until the termination of this Agreement and the delivery as hereinafter provided of stock certificates in exchange for Voting Trust Certificates, each registered owner [fol. 4282] of a Voting Trust Certificate shall be entitled from time to time to receive payments equal to cash dividends, if any, collected by or for the account of the Voting Trustees upon the number of shares of TWA Stock called for by such Voting Trust Certificate, and to receive Voting Trust Certificates (or scrip therefor) in respect of any dividends payable in TWA Stock so collected.

Any dividends received by the Voting Trustees other than cash dividends or dividends payable in TWA Stock shall as soon as conveniently possible be transferred to and distributed among the registered owners of Voting Trust Certificates in accordance with their respective interests therein, all at such time and in such manner as the Voting Trustees shall determine is appropriate.

In case any additional capital stock of the Corporation hereafter authorized shall be offered to the holders of TWA Stock for subscription, then in such case the Voting Trustees shall immediately notify the registered owners of Voting Trust Certificates that such offer has been made and of the terms thereof and the period within which such stock may be subscribed and paid for; and upon receiving from

the registered owner of any Voting Trust Certificate within the period fixed by the Voting Trustees for such purpose a request to subscribe in his behalf and the money required to pay for a stated amount of such increased stock (not in excess of the ratable amount subscribable by such registered owner in respect of the TWA Stock represented by such Voting Trust Certificate), the Voting Trustees will make such subscription and payment, and upon receiving from the Corporation the certificate or certificates for any TWA Stock so subscribed for, will issue Voting Trust Certificates (or scrip therefor) in respect thereof to such owner, and upon receiving from the Corporation the certificate or certificates for any stock of the Corporation, other than TWA Stock, so subscribed for, will deliver such certificate or certificates to such owner. The Voting Trustees shall not be required to make any such subscription or payment or issue unless provided with funds and reimbursed for any tax or other expense which may be incurred by them or may exist in connection therewith; and shall in no event be required to make any such subscription in respect of deposited shares [fol. 4283] represented by scrip. The Voting Trustees shall have full power and discretion to prescribe and regulate any and all details in connection with such subscription rights and the exercise thereof and may in their discretion issue subscription warrants covering such subscription rights and determine whether and upon what conditions such warrants may be assigned and transferred.

NINTH: The Voting Trustees may adopt their own rules of procedure. The action of a majority of the Voting Trustees for the time being in office taken at a meeting, or taken without a meeting by a writing signed by such a majority, shall, except as otherwise herein specifically provided, constitute the action of the Voting Trustees and have the same effect as though taken by all the Voting Trustees. Any Voting Trustee may vote or may act in person or by his proxy given to any other Voting Trustee or Voting Trustees or to any other person or persons. Any Voting Trustee may act as a director or officer of the Corporation and may vote for himself as such, and he or any firm of which he is a member or any corporation of which he may be a stockholder, direc-

tor, officer, agent or employee may purchase, sell, own, hold or deal in Voting Trust Certificates, and may contract with the Corporation or be or become pecuniarily interested in any manner or transaction to which the Corporation or any affiliated company may be a party or in which the Corporation may in any way be concerned, as fully and freely as though he were not a Voting Trustee.

TENTH: The Voting Trustees assume no liability as stockholders, their interest hereunder being that of trustees merely. In voting the TWA Stock represented by the stock certificates held by them hereunder (which they may do either in person or by proxy to any one or more of them or to any other person or persons or to his or their substitute or substitutes), the Voting Trustees will exercise their best judgment to secure the election of suitable directors of the Corporation, to the end that its business and affairs shall be properly managed, and the Voting Trustees will likewise vote and act in other matters in accordance with their best judgment; but they assume no responsibility in respect of [fol. 4284] such management or in respect of any action taken by them or taken in pursuance of their vote so cast, and no Voting Trustee shall incur any responsibility as trustee or otherwise by reason of any error in law, mistake of judgment, or of any matter or thing done or suffered or omitted to be done under this Agreement except for his own individual malfeasance.

The Voting Trustees assume no responsibility with respect to the validity or genuineness of any of the stock certificates (or other securities received in lieu thereof) deposited with them hereunder or of any notice, request, assignment, power of attorney, acknowledgment or other paper or document, and they shall be entitled to assume that any such stock certificates (or other securities) so deposited with them and any such other paper or document are genuine and valid and what they purport to be and have been signed by the proper parties or party and that any endorsements and assignments thereof are genuine and legal; and in making delivery of stock certificates (or other securities or cash received in lieu thereof), upon the surrender of Voting Trust Certificates representing the same,

the Voting Trustees shall be entitled to deliver any stock certificates (or other securities received in lieu thereof) purporting and believed by the Voting Trustees to be genuine and legal.

The Voting Trustees may retain counsel to advise and represent them in any and all matters arising under this Agreement and may employ and fix the compensation of accountants and other agents who may do or perform any acts in behalf of the Voting Trustees within the scope of their respective agencies which the Voting Trustees are authorized hereunder to do or perform, and the reasonable charges of such counsel and other disbursements and expenses made or incurred by the Voting Trustees in the administration of their trust hereunder, including all taxes or other governmental charges involved in the transfer or issuance of any stock or Voting Trust Certificates or subscription warrants or in respect of the ownership of the TWA Stock (or other securities received in lieu thereof) held by them as trustees or in respect of any dividends, distributions or other rights in respect of such TWA Stock (or other securities) and the expenses of printing the Voting [fol. 4285] Trust Certificates (and scrip therefor) shall be borne and promptly paid by the Corporation, and the Corporation hereby agrees to pay or advance the same forthwith from time to time upon the demand of the Voting Trustees. The Voting Trustees may pay any taxes which they shall lawfully be required to pay out of any funds in their hands or of any dividends or distributions and shall have a lien with interest for any sums so paid upon the respective shares of TWA Stock (or other securities) or dividends or distributions held by the Voting Trustees upon which any such tax may be applicable.

The Voting Trustees shall be entitled to receive and the Corporation will pay reasonable compensation for their services hereunder, in such amount as the Board of Directors of the Corporation shall determine.

ELEVENTH: Until the termination of this Agreement and the actual delivery of stock certificates or the avails thereof in exchange for Voting Trust Certificates hereunder, the

Voting Trustees shall possess and shall be entitled in their discretion, not subject to any review, to exercise in person or by their proxy, in respect of any and all shares of TWA Stock at the time on deposit under this Agreement all rights and powers of every name and nature, including the right to vote thereon or to consent to any and every act of the Corporation.

Without in anywise limiting the generality of the foregoing and except as aforesaid, the Voting Trustees are specifically authorized in the exercise of their sole and absolute discretion in respect of any and all TWA Stock at any time deposited under this Agreement to vote for or consent to: the election of directors of the Corporation, the removal of directors of the Corporation, any increase, reduction or reclassification of the capital stock of, or any reduction of the capital of, the Corporation, any changes or amendments in or to the Certificate of Incorporation of the Corporation, the sale or disposal in any manner of all or any part or parts of the property, assets or business of the Corporation, any merger or consolidation of the Corporation with any other corporation, and any reorganization of the Corporation, and any action with respect to any of the foregoing [fol. 4286] which any stockholder might lawfully take, and upon any such increase, reduction or reclassification of stock, reduction of capital or merger, consolidation or reorganization becoming effective, to make such surrender of TWA Stock deposited under this Agreement as may be proper or expedient and to receive and hold under this Agreement in lieu thereof any and all stock issued in exchange for such surrendered TWA Stock, and thereafter, in the discretion of the Voting Trustees, they may receive and appropriately issue Voting Trust Certificates against other stock issued pursuant to any such corporate change. For all purposes of this Agreement any such stock so received by the Voting Trustees in exchange for TWA Stock so surrendered shall take the place of the TWA Stock so surrendered by them.

TWELFTH: Any Voting Trustee may at any time resign by filing at the principal office of the Corporation in the State of Delaware his resignation in writing and concur-

rently notifying the Agent and the other Voting Trustees (at the last known address of such other Voting Trustees) in writing of such filing of such resignation, and such resignation shall be effective 10 days after the date of such filing of such resignation without any acceptance thereof.

or any successor to

(and such successor's successor and so on in line of succession) may be removed by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding by an instrument or concurrent instruments signed by such owners or their duly authorized attorneys-in-fact and filed at said principal office of the Corporation. or or any successor to or (and such successor's successor and so on in line of succession) may be removed by the Notes Agent by an instrument signed by or on behalf of the Notes Agent and filed at said principal office of the Corporation.

In the event of the resignation, removal, death or inability to act of any Voting Trustee a vacancy shall be deemed to exist in his office and such vacancy may be filed at any time by the appointment of a successor in the manner hereinafter provided.

[fol. 4287] Any successor to (and such successor's successor and so on in line of succession) as Voting Trustee shall be appointed by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding by an instrument or concurrent instruments signed by such owners or their duly authorized attorneys-in-fact and filed at said principal office of the Corporation.

Any successor to or (and such successor's successor and so on in line of succession) as Voting Trustees shall be appointed by the Notes Agent by an instrument signed by or on behalf of the Notes Agent and filed at said principal office of the Corporation, *provided, however*, that if any vacancy in the office of either of such Voting Trustees shall have continued for more than 10 days, then

or , or any successor to or theretofore appointed by the Notes Agent (and such successor's successor and so on in line of succession) may appoint a successor Voting Trustee to fill such vacancy.

As promptly as possible after the filing at said principal office of the Corporation of any such instrument of resignation or removal of any Voting Trustee or any such instrument appointing a Voting Trustee, the Corporation shall mail notice thereof to the Agent and to the other Voting Trustees at the last known address of such other Voting Trustees.

If any vacancy in the office of a Voting Trustee shall have continued for more than 10 days the remaining Voting Trustee or Voting Trustees may exercise all the rights, powers and privileges of the Voting Trustees hereunder until such vacancy or vacancies shall have been filled by the appointment of a successor Voting Trustee or successor Voting Trustees in the manner hereinabove provided.

Any successor Voting Trustee appointed as herein provided shall indicate his acceptance of such appointment by signing the counterpart of this Agreement on file at said principal office of the Corporation and thereupon such successor shall be vested with all the rights, powers, duties and immunities herein conferred upon the Voting Trustees [fol. 4288] as though such successor had been originally a party to this Agreement as a Voting Trustee. The term "Voting Trustees" as used in this Agreement and in the Voting Trust Certificates issued hereunder shall apply to and mean the parties of the second part hereto, the survivors or survivor of them and their respective successors.

THIRTEENTH: This Agreement shall terminate on the earliest of the following dates, namely: (a)[** , unless the duration of this Agreement shall be extended as provided in Article Seventeenth hereof], or

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** Here insert June 30, 1980, or 10 years after the date of the Agreement, whichever shall be earlier.

(b) the date on which the Trustee under the Note Indenture shall execute an instrument acknowledging satisfaction of and discharging the same, or (c) the date on which there shall be delivered to the Corporation an instrument signed by or on behalf of the Notes Agent terminating this Agreement.

FOURTEENTH: Upon the termination of this Agreement the Voting Trustees in exchange for and upon surrender of any Voting Trust Certificate then outstanding shall, in accordance with the terms hereof and upon payment, if the Voting Trustees shall so require, of a sum sufficient to reimburse them for any tax or other governmental charge in connection with such delivery, deliver certificates for TWA Stock to the amount called for by such Voting Trust Certificate, and the Voting Trustees may require the holder of such Voting Trust Certificate to surrender the same for such exchange. Nothing in this Article Fourteenth or elsewhere in this Agreement contained shall, however, be construed to deprive the Voting Trustees, or their nominee or nominees, of the right as record holder or holders of the deposited shares to vote the same and to execute consents with respect thereto, notwithstanding the termination of this Agreement, so long as they shall continue to be the record holders thereof.

After any termination of this Agreement as above provided, the Voting Trustees may in their discretion deposit any stock or other property then held hereunder with the Agent with authority and instructions to make delivery thereof in exchange for outstanding Voting Trust Cer-
[fol. 4289] tificates as provided in this Article Fourteenth, and thereupon all further obligations or duties of the Voting Trustees under this Agreement or any provision thereof shall cease.

The Voting Trustees shall give the owners of the Voting Trust Certificates notice of any termination of this Agreement prior to the date stated in clause (a) of Article Thirteenth hereof.

FIFTEENTH: All notices to be given to the owners of Voting Trust Certificates shall be given by mailing the

same to the registered owners of Voting Trust Certificates addressed to their respective addresses as shown on the books of the Voting Trustees, and any notice whatsoever when mailed by or on behalf of the Voting Trustees to such registered owners of Voting Trust Certificates as herein provided shall have the same effect as though personally served on all holders of Voting Trust Certificates.

SIXTEENTH: Farmers Bank of the State of Delaware is hereby appointed the Agent of the Voting Trustees to receive certificates representing shares of TWA Stock and to sign and issue Voting Trust Certificates in the name and as Agent of the Voting Trustees and to transfer Voting Trust Certificates. The Agent now or hereafter appointed by the Voting Trustees may resign upon 30 days' written notice to the Voting Trustees or on such shorter notice as the Voting Trustees may accept. The Voting Trustees shall have the power to remove any Agent and in case of the resignation or removal of any Agent or in case any Agent shall in any way become disqualified from acting, a successor Agent having an office in the City of Dover, Delaware, or in the City of Wilmington, Delaware, may be appointed by the Voting Trustees and they shall cause notice of such appointment to be given to the Corporation and to the registered owners of Voting Trust Certificates. Upon the resignation, removal or disqualification of any Agent, the Agent shall, upon payment of its proper charges, deliver the custody of the stock certificates held hereunder as well as all other property held hereunder to the successor Agent or otherwise as the Voting Trustees shall direct and the successor Agent shall have and possess all [fol. 4290] the rights and immunities of the Agent originally named herein.

The Voting Trustees and the Agent shall be fully protected in acting in the discharge of any of their or its duties hereunder upon any instrument, document or paper believed by them or it to be genuine and to have been executed by the proper parties and the Agent shall be fully protected in issuing any Voting Trust Certificates hereunder, or in taking or in refraining from taking any action hereunder in reliance upon any direction or statement,

purporting to be signed by the Voting Trustees or their authorized proxies, as to the existence or nonexistence of any fact or the performance or nonperformance of any act and may accept as conclusive any such statement.

The Agent shall not incur any liability to anyone by reason of anything done or permitted or omitted to be done by it at the request or direction of the Voting Trustees, or because of any disposition which it shall make at the request or direction of the Voting Trustees of any stock certificate or other document or paper or funds or property deposited with it pursuant to any of the provisions hereof, or for any action which it may take or refrain from taking in respect thereof upon like request or direction, it being the intent and purpose of this Agreement that such stock certificates, documents, papers, funds and property shall be wholly at the order of and under the control of the Voting Trustees; and no Agent of the Voting Trustees shall incur any liability whatsoever except for its own individual malfeasance in the discharge of its duties as specified in this Article Sixteenth, nor shall it be liable for negligence of its agents, officers or employees, if chosen and retained with due care. The Agent shall be entitled to reasonable compensation for its services hereunder and to be reimbursed for all expenses incurred by it hereunder, and all such reasonable compensation and expenses shall be deemed to be expenses of the Voting Trustees required to be borne and promptly paid by the Corporation as provided in Article Tenth hereof.

SEVENTEENTH: This Agreement shall not be terminated except as provided in Article Thirteenth hereof, nor shall the duration of this Agreement be extended or this Agree-
[fol. 4291] ment amended or modified in any other respect except by an instrument or concurrent instruments in writing signed by or on behalf of the Notes Agent, by the Corporation, by all the Voting Trustees and by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding or their duly authorized attorneys-in-fact and filed at the principal office of the Corporation in the State of Delaware, provided, however, that in the case of any extension of the duration of this Agree-

ment, (1) the instruments effecting such extension shall be signed and filed as aforesaid only during the twelve month period immediately preceding the termination date specified in clause (a) of Article Thirteenth, (2) no such extension shall extend the duration of this Agreement beyond the maximum period then permitted by the laws of the State of Delaware, and (3) no such extension shall affect the rights or obligations of any holder of Voting Trust Certificates who shall not consent to such extension.

In the event that the duration of this Agreement shall be extended pursuant to this Article, the Voting Trustees shall forthwith give notice of such extension in the manner provided in Article Fifteenth to all registered owners of Voting Trust Certificates. Each holder of any Voting Trust Certificate who shall not have signed a written instrument consenting to such extension, in person or by duly authorized attorney-in-fact, shall be deemed to have consented to such extension unless, within 90 days after the date of the mailing of such notice, the holder or the registered owner of such Voting Trust Certificate shall file with the Voting Trustees, at the principal office of the Agent in the State of Delaware, and with the Corporation at its principal office in the State of Delaware, a statement to the effect that such holder or registered owner does not consent to such extension, in which event the Voting Trustees shall, from and after the termination date specified in clause (a) of Article Thirteenth, deliver a certificate or certificates for TWA Stock in exchange for and upon surrender of any Voting Trust Certificates by such holder or registered owner. Any such exchange shall be effected in the manner provided in Article Fourteenth as if this Agreement had [fol. 4292] been terminated.

EIGHTEENTH: This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and all of such counterparts shall together constitute but one and the same instrument.

NINETEENTH: Until the termination of this Agreement one original counterpart hereof and of any amendment or modification hereof effected pursuant to Article Seven-

teenth shall be filed at the principal office of the Corporation in the State of Delaware and open to the inspection of any holder of stock of the Corporation or of any Voting Trust Certificate daily during business hours.

TWENTIETH: This Agreement has been made in the City of Wilmington, Delaware, and this Agreement and the trust hereby created shall be construed and governed by the laws of said State and the validity and effect of said trust and of this Agreement shall be determined in accordance with the laws of said State.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

TRANS WORLD AIRLINES, INC.

By .....
Vice-President.

Attest:

.....
Secretary.

.....(L. S.)

.....(L. S.)

.....(L. S.)

Voting Trustees

[fol. 4293]

HUGHES TOOL COMPANY

By .....
Vice-President.

Attest:

.....
Secretary.